

United States
Circuit Court of Appeals
For the Ninth Circuit.

CITY OF RENO, a Municipal Corporation,
Appellant,

vs.

SIERRA PACIFIC POWER COMPANY, a Cor-
poration,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Nevada.

FILED

JUL 29 1930

PAUL R. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

—————
CITY OF RENO, a Municipal Corporation,
Appellant,

vs.

SIERRA PACIFIC POWER COMPANY, a Corporation,
Appellee.

—————
Transcript of Record.
—————

Upon Appeal from the United States District Court
for the District of Nevada.

—————

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer	77
Assignment of Errors.....	94
Bond on Appeal.....	98
Certificate of Clerk U. S. District Court to Transcript of Record	102
Citation on Appeal.....	104

EXHIBITS:

Plaintiff's Exhibit "A"—Complaint.....	1
Plaintiff's Exhibit "B"—Minutes of County Commissioners of Washoe County—December 14, 1874—Order Granting Right to Reno Water Com- pany to Lay Pipes for Conveying Water	31
Plaintiff's Exhibit "C"—Minutes of County Commissioners of Washoe County—March 5, 1879—Order Grant- ing Reno Water Company Right to Lay Water Pipes in Town of Reno....	32
Plaintiff's Exhibit "D"—Deed of Convey- ance Dated November 11, 1889, Reno	

	Index.	Page
EXHIBITS—Continued:		
Water Co. to Reno Water, Land & Light Co.....		33
Plaintiff's Exhibit "E"—Deed of Conveyance Dated March 12, 1902, The Reno Water, Land and Light Company to Nevada Power, Light and Water Company		37
Plaintiff's Exhibit "F"—Deed of Conveyance Dated April 14, 1904, Nevada Power, Light and Water Company to Reno Power, Light and Water Company		43
Plaintiff's Exhibit "G"—Deed of Conveyance Dated June 30, 1922, Reno Power, Light and Water Company to The Truckee River General Electric Company		57
Hearing on Application for Injunction Pendente Lite, etc.....		29
Memorandum Decision and Orders Denying Motion to Dismiss Complaint and Granting Preliminary Injunction		75
Minutes of Court—April 24, 1930—Hearing on Application for Injunction Pendente Lite, etc.		29
Minutes of Court—May 5, 1930—Memorandum Decision and Orders Denying Motion to Dismiss Complaint and Granting Preliminary Injunction		75

Index.	Page
Minutes of Court—May 31, 1930—Order Allow- ing Appeal and Fixing Bond.....	91
Motion to Dismiss Complaint and to Dissolve Temporary Restraining Order.....	23
Names and Addresses of Attorneys of Record.	1
Notice of Appeal from Decision and Orders De- nying Motions to Dismiss Complaint and to Dissolve Restraining Order, and from Order Granting Injunction Pendente Lite.	93
Order Allowing Appeal	92
Order Allowing Appeal and Fixing Bond.....	91
Order Continuing Hearing on Injunction to April 24, 1930, etc.....	23
Petition for Allowance of Appeal.....	90
Praecipe for Certification of Record on Appeal (Filed May 31, 1930).....	101
Praecipe for Certification of Record on Appeal (Filed June 16, 1930).....	101
Reply	86
Restraining Order	17
Stipulation Continuing Hearing on Injunction to April 24, 1930, etc.....	22
Subpoena in Equity.....	14
Undertaking on Temporary Restraining Order.	19

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Hon. LE ROY F. PIKE, City Attorney, Reno, Nevada, and Hon. SARDIS SUMMERFIELD, Reno, Nevada,
For Plaintiffs in Error.

Messrs. THATCHER & WOODBURN, Reno, Nevada,
For Defendant in Error. [1*]

PLAINTIFF'S EXHIBIT "A."

Filed Apr. 3, 1930. E. O. Patterson, Clerk.
O. E. Benham, Deputy.

In the District Court of the United States of America, in and for the District of Nevada.

IN EQUITY—No. G.-29.

SIERRA PACIFIC POWER COMPANY, a Corporation,

Plaintiff,

vs.

CITY OF RENO, a Municipal Corporation, E. E. ROBERTS, Mayor of the City of Reno, JAMES GLYNN, City Engineer of the City of Reno, LE ROY F. PIKE, City Attorney of the City of Reno,

Defendants.

*Page-number appearing at the foot of page of original certified Transcript of Record.

COMPLAINT.

To the Honorable FRANK H. NORCROSS, District Judge of the United States in and for the District of Nevada:

The plaintiff, Sierra Pacific Power Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, and a citizen and resident of said state, brings this its complaint against the defendants above named, and each of them, and complains and alleges:

I.

That plaintiff is a corporation organized and existing [2] under and by virtue of the laws of the State of Maine, and is now, and at all times mentioned in this complaint was, a citizen and resident of said State of Maine, authorized and doing business in the State of Nevada and in Washoe County thereof. That the defendant, City of Reno, is a municipal corporation, organized and existing under and by virtue and pursuant to various and sundry acts of the Legislature of the State of Nevada, and was such corporation at all times mentioned herein, and that said defendant was and is a citizen and resident of the State of Nevada. That the defendant, E. E. Roberts, is now and for a number of years last past has been, the duly elected, qualified and acting Mayor of the City of Reno. That said defendant, at all times mentioned herein, was and is now a citizen and resident of the State of

Nevada and of the County of Washoe thereof. That the defendant, James Glynn, is now and for some time last past has been, the duly appointed and acting City Engineer of the City of Reno, and the head of the Engineering Department of said City, and said defendant is now, and for many years last past has been, a citizen and resident of the State of Nevada, and of Washoe County thereof. That the defendant, Le Roy F. Pike, is now and for some-time last past has been, the duly elected, qualified and acting Attorney of the City of Reno. That said defendant, at all times mentioned herein, was and is now a citizen and resident of the State of Nevada and of the County of Washoe thereof.

II.

That this suit is a controversy between the plaintiff, a resident and citizen of the State of Maine, and the defendants, who are each and all of them residents and citizens of the State of Nevada, and the amount of the controversy herein, exclusive [3] of costs and interest, greatly exceeds the sum and value of \$3,000.00.

III.

That plaintiff is now, and plaintiff and its predecessors in interest for many years last past have been, engaged in selling, furnishing, serving and distributing water to the inhabitants of the Cities of Reno and Sparks, and to said Cities of Reno and Sparks, for domestic use and for commercial, fire and other purposes. That plaintiff and its predecessors in interest, at all times mentioned in

this complaint, and for more than twenty years last passed, owned, operated maintained plants, reservoirs, pipelines, canals, ditches, diversion dams, water and water rights, mains and services, all of which were and now are used and useful in selling, furnishing, serving and distributing water to the inhabitants of the Cities of Reno and Sparks, and to said Cities of Reno and Sparks, for domestic use and for commercial purposes and for various and other sundry purposes. That plaintiff and its predecessors in interest, acting as aforesaid, have been acting under and by virtue of franchises and the right to furnish, serve, distribute and sell water to the inhabitants of the Cities of Reno and Sparks, and to said Cities of Reno and Sparks, for domestic use, commercial purposes, fire and other sundry purposes and uses. That plaintiff and its predecessors in interest, for more than twenty years last past, in the operation and maintenance of its said plant, pipelines, mains and services, have used the streets and alleys of said City of Reno and have laid, installed and maintained under said streets and alleys, mains, pipelines, services and various other sundry apparatus and equipment for the purpose of selling, furnishing, [4] serving and distributing water to the inhabitants of the City of Reno and to said City of Reno, for domestic use, commercial, fire and other purposes.

IV.

That for some months last past the plaintiff has installed upon and in certain of its services and

mains within the City of Reno, water meters and the foundations therefor; said water meters being installed for the purpose of measuring the amount of water passing through certain of the mains of the plaintiff and through certain of the services from said mains to individual customers and consumers. That said foundations and said meters so installed were installed and are maintained for various and sundry purposes and because of the following facts and circumstances:

That during the summer of the year 1929, the draught on the reservoirs of the plaintiff company, for the purpose of supplying water to the inhabitants of the Cities of Reno and Sparks and to said Cities of Reno and Sparks, reached a maximum of fourteen million gallons per day. That during the winters of 1929 and 1930, the draught on said reservoirs was from seven million to nine million gallons per day. That the amount of water so used by said Cities of Reno and Sparks is approximately Five Hundred gallons per capita per day and is far in excess of the amount of water necessary to be furnished to the inhabitants thereof for domestic, commercial, fire, irrigation and other proper purposes, and shows that there is a large and unnecessary waste of water within the Cities of Reno and Sparks by the users and consumers of the plaintiff. That plaintiff can only determine that there is a waste of water, the extent thereof, the persons, consumers, or classes of consumers, responsible therefor, by installing meters [5] to the different classes of consumers, domestic, commercial and others.

That it is necessary to install and maintain meters upon the lines, mains and services of the plaintiff for the purpose of determining and ascertaining whether or not there is any leakage out of the mains and services of the plaintiff and whether or not such leakage is due to any defect in such mains, lines and services. That it is necessary to install said meters so that the plaintiff may from time to time determine the amount of water that is, or should be, a normal and reasonable use for various classes of consumers in Reno and Sparks without wastage, and for the purpose of determining whether or not certain individual consumers and users are wasteful. That the installation of said meters is necessary in order that plaintiff may determine and ascertain from time to time the amount of water used by various of its consumers so that the company may from time to time classify its said consumers for the purpose of fixing and determining the rate classification to be charged for the service and to the classes of consumers using the same. That the installation of said meters is necessary and advisable to plaintiff in order that it may ascertain the actual amount of water which is necessary to be furnished to the City of Reno, the City of Sparks, and to the inhabitants of said cities, and so that plaintiff may from time to time provide for such additional water, or waters, as may be necessary for the conduct of its business and necessary to supply water to the inhabitants of the Cities of Reno and Sparks and to said cities, and provide service for the continued increase in population thereof.

That the meters so installed by the plaintiff, and other meters which the plaintiff intends [6] to install, operate and maintain, are and will be installed for the purposes hereinbefore set forth, and are and will be check meters for the purpose of giving to the company the information and data necessary and desirable in the operation of its business. That said meters have not been installed, nor will the meters which the company proposes to install, be installed for the purpose of fixing charges against the users and consumers of plaintiff in the City of Reno. That the meters which have been installed by plaintiff, as well as the meters which the company proposes to install, together with the foundations therefor, do not and will not constitute obstructions in any of the streets and alleys of the City of Reno. That said meters and foundations so installed, or to be installed, have been and will be so placed, installed and maintained, that they will in nowise obstruct the streets and alleys of the City of Reno, or in anywise interfere with the use of the same by said city, or the public.

V.

That on or about the 27th day of March, 1930, the City Attorney of the City of Reno, pursuant to instructions of the Mayor of the said City, the defendant E. E. Roberts, addressed to the plaintiff a letter in words and figures as follows:

“Sierra Pacific Power Company,
21 East Street,
Reno, Nevada.

Gentlemen:

It has been brought to the attention of the officials of the City of Reno that your company is installing water meters in the public streets and alleys of the City of Reno.

These meters are being installed in violation of Section 13 of an Act of the Legislature of the State of Nevada entitled: ‘An Act defining public utilities, providing for the regulation [7] thereof, creating a Public Service Commission, defining its duties and powers, and other matters relating thereto.’ Statutes of Nevada, 1919.

These meters and the foundations for the same are also considered obstructions in the streets and alleys of the City of Reno, and are being installed without a permit from the City.

I have been instructed by the Mayor of the City of Reno to inform you that these meters and foundations for the same must be removed immediately, and that you are to cease installing meters in the streets and alleys.

I am further authorized to inform you that if the same are not removed immediately that the Engineering Department of the city will remove the same, and that you will be held liable for damages to the public streets of the City of Reno.

Very truly yours,

(Signed) LE ROY F. PIKE,

LFP:FO

City Attorney.”

And thereafter, on the 28th day of March, 1930, the defendant, Le Roy F. Pike, as said City Attorney, pursuant to instructions of the defendant, E. E. Roberts, Mayor of the City of Reno, sent to plaintiff a letter in words and figures as follows:

“Sierra Pacific Power Company,
Reno, Nevada.

Gentlemen:

Mayor E. E. Roberts of the City of Reno instructed me this morning to inform you that a number of meters have been installed on the various streets of the City of Reno by your Company without the permission of the City or the property owners, and that you are to be given ten days within which to remove the same.

If these meters are not removed within ten days the City Engineering Department will remove the same, and all costs connected therewith, including damages to the streets, will be charged against you.

Very truly yours,
LE ROY F. PIKE,
City Attorney. (Signed)” [8]

VI.

That the defendants threatened to and will, unless restrained by order of this honorable court, remove the meters and foundations for the same, and enter in and upon the property of the plaintiff and its lines, mains and services, and remove therefrom and destroy the meters and foundations so installed by plaintiff upon its said mains, lines and property, and to obstruct and prevent the plaintiff from installing

or maintaining upon its mains, lines and services in the City of Reno, meters and foundations and other apparatus and appliances, all of which will be to the great and irreparable damage and injury of the plaintiff. That in order to protect the plaintiff in its rights as aforesaid, and in the possession of its property and in its right to operate and maintain its said plant, pipes, mains, services and equipments as a public utility, supplying the Cities of Reno and Sparks and their inhabitants, with water, it is necessary that plaintiff have the interposition of the equitable arm of this court in restraining the defendants, and each of them, *pendente lite*, from in any manner entering in or upon any part of portion of the plaintiff's property, or in or upon any of its mains, services, appliances or equipment, or from in any manner interfering with, destroying or removing the meters and foundations therefor, installed and to be installed by the plaintiff upon its mains, services, and in and about its plant. That unless the defendants, and each of them, are restrained *pendente lite*, and until further order of this honorable court, they, and each of them, will enter in and upon the property of the plaintiff, and in and upon its mains, lines and services, and unlawfully and without right, remove therefrom such meters and foundations as have [9] been, or will be installed or maintained by the plaintiff thereon and therein. That said unauthorized action of said defendants is unlawful and without right, and is, and will be an unlawful invasion of the property rights of the plaintiff.

VII.

That because of the matters and things aforesaid, a temporary restraining order should be granted without notice, in that because of the matters and things aforesaid, immediate and irreparable loss and/or damage will result to the plaintiff before application for injunction can be heard upon notice.

VIII.

That plaintiff has no plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, plaintiff prays:

I.

That this court issue, without notice, its restraining order, restraining the defendants, and each of them until hearing, from removing the meters and foundations of plaintiff so installed, or to be installed, upon plaintiff's property, lines, mains and services, and restraining said defendants, and each of them, their agents, servants and employees, from in anywise destroying the meters and foundations, or from obstructing or in anywise preventing the plaintiff from installing or maintaining upon its mains, lines, and services in the City of Reno, such meters and foundations, or other apparatus and appliances. That upon hearing, said restraining order be continued as an injunction, *pendente lite*, to continue until final determination of this action, or until further order of the above-entitled court, and upon final hearing [10] that plaintiff have judgment and decree against the defendants, and each of them, perpetually enjoining said defendants,

and each of them their agents, servants and employees, and all persons acting by, under or through them, or either or any of them, from removing any meters or foundations for the same, installed, or to be installed, operated and maintained, upon the property of the plaintiff, and upon its lines, mains and services, and enjoining said defendants, their agents, servants and employees, from in anywise removing said meters, or destroying the same, or the foundations so installed for such meters by plaintiff upon its property, mains, lines, and services, and perpetually enjoining said defendants, and each of them, from in anywise interfering with the plaintiff in the installation and maintenance upon its mains, lines and services, of meters, foundations and other apparatus and appliances necessary to the *conduct* of plaintiff's business, and to the operation of its said property so used as part of its water plant in the City of Reno.

II.

For cost of suit.

III.

For such other and further relief as may be just and equitable in the premises.

GEO. B. THATCHER,
WM. WOODBURN,

Attorneys for Plaintiff. [11]

United States of America,
State of Nevada,
County of Washoe,—ss.

George A. Campbell, being first duly sworn, deposes and says: That he is the manager of the Sierra Pacific Power Company, the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to such matters, he believes it to be true.

GEORGE A. CAMPBELL.

Subscribed and sworn to before me this 3d day of April, 1930.

[Seal]

W. E. ZOEBEL,

Notary Public in and for the County of Washoe,
State of Nevada.

[Endorsed]: No. G.-29. U. S. District Court, Nevada. Sierra Pacific Power Co., Plaintiff, vs. City of Reno, Defendant. Plffs. Exhibit No. "A." Filed Apr. 24, 1930. E. O. Patterson, Clerk. By O. E. Benham, Deputy Clerk. [12]

SUBPOENA IN EQUITY.

District of Nevada,—ss.

The President of the United States of America to:
 City of Reno, a Municipal Corporation, E. E.
 Roberts, Mayor of the City of Reno, James
 Glynn, City Engineer of the City of Reno, Le
 Roy F. Pike, City Attorney of the City of Reno,
 GREETING:

You are hereby commanded that you, and each of
 you, personally appear before the Judge of our Dis-
 trict Court of the United States for the District of
 Nevada, at the courtroom thereof in Carson City,
 Nevada, to answer unto a complaint exhibited
 against you in said court, by Sierra Pacific Power
 Company, a corporation, and to do further and re-
 ceive whatever said court shall have considered in
 that behalf.

WITNESS the Honorable FRANK H. NOR-
 CROSS, Judge of the District Court of the United
 States for the District of Nevada, and the seal of
 said court hereunto affixed, this 3d day of April,
 1930, and of the year of our Independence the 154th.

[Seal]

Attest: E. O. PATTERSON,

Clerk.

O. F. Pratt,

Deputy.

THATCHER & WOODBURN,
 Solicitors for Complainant.

MEMORANDUM.

The defendants are required to file their answer or other defense in the Clerk's office at Carson City, Nevada, on or before the twentieth day after service, exclusive of the day thereof, otherwise the bill may be taken *pro confesso*.

E. O. PATTERSON,
Clerk.

By O. F. Pratt,
Deputy. [13]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Nevada,—ss.

I hereby certify and return that I served the annexed subpoena in equity on the therein named James Glynn by handing to and leaving a true and correct copy thereof with him personally at Reno in said District on the 5th day of April, A. D. 1930.

J. H. FULMER,
U. S. Marshal.
By G. L. Plummer,
Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Nevada,—ss.

I hereby certify and return that I served the annexed subpoena in equity on the therein-named City of Reno by serving its Mayor E. E. Roberts, *E. E. Roberts*, and Leroy F. Pike by serving his secretary at his office by handing to and leaving a true and correct copy thereof with each personally at Reno in said District on the 7th day of April, A. D. 1930.

J. H. FULMER,
U. S. Marshal.
By G. L. Plummer,
Deputy.

[Endorsed]: No. G.-29. United States District Court, District of Nevada. Sierra Pacific Power Company, a Corporation, Plaintiff, vs. City of Reno, a Municipal Corporation, et al., Defendants. Subpoena in Equity. Filed on return this 9th day of April, 1930. E. O. Patterson, Clerk. By O. F. Pratt, Deputy. Civil Docket No. 1911. [14]

Filed April 5th, 1930. E. O. Patterson, Clerk.
By _____, Deputy.

Refiled April 9, 1930. E. O. Patterson, Clerk.
By O. F. Pratt, Deputy.

[Title of Court and Cause.]

RESTRAINING ORDER.

Upon the reading of the verified complaint on file herein, and upon application and motion of attorneys for plaintiff, for the issuance of a restraining order and an injunction *pendente lite*, as prayed for in the verified complaint; and it appearing from the verified complaint on file herein, and the Court being of the opinion therefrom that irreparable loss and/or damage will result to the plaintiff, unless a temporary restraining order is granted without notice,—

NOW, THEREFORE, IT IS ORDERED that the defendants, City of Reno, a municipal corporation, E. E. Roberts, Mayor of the City of Reno, James Glynn, City Engineer of the City of Reno, [15] Le Roy F. Pike, City Attorney of the City of Reno, and each of them, their agents, successors, deputies, servants and employees, and all persons acting by, through or under them or either of them or by or through their order, be, and they are hereby, restrained until the 12th day of April, 1930, and until the hearing of the application of plaintiff for its interlocutory injunction, from in any manner removing the meters and foundations of plaintiff so installed, or to be installed, upon the plaintiff's property lines, mains and services in the City of Reno; and restraining said defendants, and each of them, their agents, servants and employees, and all persons acting by, under or through them, or

either of them, from in anywise destroying the said meters and foundations so installed upon plaintiff's property in the City of Reno, or from in anywise obstructing or preventing the plaintiff from installing or maintaining upon its mains, lines and services in the City of Reno, said meters and foundations, and enjoining the defendants, and each of them, from bringing, maintaining or prosecuting, or causing to be commenced, brought or maintained or prosecuted any suit or action or proceeding, for the purpose of preventing the plaintiff from installing or maintaining meters and foundations upon its lines, mains and services and property in the City of Reno.

IT IS FURTHER ORDERED that plaintiff file a bond, conditioned as required by law, in the sum of \$5,000.00 for the payment of all damages which may accrue by virtue of the issuance of this restraining order.

Dated this 4th day of April, 1930.

FRANK H. NORCROSS,
District Judge. [16]

RETURN OF SERVICE WRIT.

United States of America,
District of Nevada,—ss.

I hereby certify and return that I served the annexed restraining order on the therein named James Glynn by handing to and leaving a true and correct

copy thereof with him personally at Reno in said District on the 5th day of April, A. D. 1930.

J. H. FULMER,
U. S. Marshal.

By G. L. Plummer,
Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Nevada,—ss.

I hereby certify and return that I served the annexed restraining order on the therein named City of Reno, by serving its Mayor, E. E. Roberts, *E. E. Roberts*, and LeRoy F. Pike by serving his secretary by handing to and leaving a true and correct copy thereof with each personally at Reno in said District on the 7th day of April, A. D. 1930.

J. H. FULMER,
U. S. Marshal.

By G. L. Plummer,
Deputy. [17]

Filed Apr. 5, 1930. E. O. Patterson, Clerk. By
O. E. Benham, Deputy.

[Title of Court and Cause.]

UNDERTAKING ON TEMPORARY RE- STRAINING ORDER.

Whereas, the above-named plaintiff has commenced, or is about to commence, an action in the above-entitled court, against the above-named de-

fendants and is about to apply for a temporary restraining order in said action, against the said defendants, enjoining and restraining them from the commission of certain acts, as in the complaint filed in the said action is more particularly set forth and described:

NOW, THEREFORE, the undersigned, National Surety Company, a corporation of the State of New York, as Surety, in consideration of the premises, and of the issuing of said temporary restraining order, does hereby undertake in the sum of Five Thousand Dollars, and promise to the effect that, in case said temporary restraining order shall issue, the said plaintiff will pay to the said parties enjoined, such damages, not exceeding the sum of Five Thousand Dollars, as such parties may sustain by reason of said temporary restraining order, if the said court finally decides that the said plaintiff was not entitled thereto.

IN WITNESS WHEREOF, the National Surety Company has caused this undertaking to be signed and its corporate seal affixed by its duly authorized attorney-in-fact at San Francisco, California, this 1st day of April, 1930.

NATIONAL SURETY COMPANY. (Seal)

By R. W. STEWART,

Attorney-in-fact.

The foregoing bond is hereby approved this 4th day of April, 1930.

FRANK H. NORCROSS,

District Judge. [18]

State of California,
City and County of San Francisco,—ss.

On this 1st day of April, in the year One Thousand Nine Hundred and 30, before me Dorothy H. McLennan, a notary public in and for the city and county of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared R. W. Stewart, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of National Surety Company, a corporation, and he acknowledged to me that he subscribed the name of National Surety Company thereto as principal, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said city and county of San Francisco the day and year in this certificate first above written.

[Seal] DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires December 23, 1930. [19]

Filed April 9th, 1930. E. O. Patterson, Clerk.
By _____, Deputy.

[Title of Court and Cause.]

STIPULATION CONTINUING HEARING
ON INJUNCTION TO APRIL 24, 1930, ETC.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the hearing of plaintiff's application for injunction *pendente lite* may be continued from the 12th day of April, 1930, to the 24th day of April, 1930, at the hour of ten o'clock A. M. of said day.

IT IS FURTHER STIPULATED by and between the parties hereto that the restraining order now in effect shall be continued in full force and effect until said date, and until hearing of said application for injunction *pendente lite*, and that the above-entitled court or the Judge thereof may so order.

Dated: This 8th day of April, 1930.

GEO. B. THATCHER,
WM. WOODBURN,
Attorneys for Plaintiff.

LE ROY F. PIKE,
Attorney for Defendants. [20]

Filed April 10th, 1930. E. O. Patterson, Clerk.
By _____, Deputy.

[Title of Court and Cause.]

ORDER CONTINUING HEARING ON IN-
JUNCTION TO APRIL 24, 1930, ETC.

Pursuant to stipulation of the parties to the above-entitled action, IT IS HEREBY ORDERED that the hearing of plaintiff's application for an injunction *pendente lite* in the above-entitled case, be and the same is hereby continued to the 24th day of April, 1930, at the hour of ten o'clock A. M. of said day, and

IT IS FURTHER ORDERED that the restraining order heretofore issued in the above-entitled action be and the same is hereby continued in full force and effect until said April 24, 1930, and until hearing of plaintiff's application for injunction aforesaid.

Dated: This 10th day of April, 1930.

FRANK H. NORCROSS,
District Judge. [21]

Filed April 24, 1930. E. O. Patterson, Clerk.
By _____, Deputy.

[Title of Court and Cause.]

MOTION TO DISMISS COMPLAINT AND TO
DISSOLVE TEMPORARY RESTRAINING
ORDER.

Now come the above-named defendants by Le Roy F. Pike as their attorney and Sardis Summerfield

as their solicitor and moves the Court to dismiss the bill of complaint filed in the above-entitled action and to dissolve the temporary restraining order issued and served in said action upon the grounds and for the reasons following, to wit:

I.

That said bill of complaint is void for want of equity and does not state facts sufficient to entitle plaintiff to the equitable relief prayed for in its bill of complaint or to any relief whatever as more particularly appears therefrom in the following respects, viz.:

(a) That it affirmatively appears from the face [22] of said bill of complaint that plaintiff as a public utility corporation is engaged in the business of serving and distributing water to defendant, City of Reno, a city of more than ten thousand population, and to the inhabitants thereof, for domestic and other beneficial purposes and that the relief sought by plaintiff in this action is an injunction prohibiting and preventing defendants from obstructing plaintiff from installing or maintaining water meters upon or in the streets and alleys of defendant, City of Reno, with which to measure the quantity of water served or delivered to said defendant, City of Reno and to the inhabitants thereof as water users and that said alleged relief if permitted would be in violation of the direct terms of that certain statute of the State of Nevada entitled "An Act defining public utilities, providing for the regulation thereof, creating a public service com-

mission, defining its duties and powers, and other matters relating thereto," approved March 28, 1919, and particularly of the terms of the proviso contained in section 13 of said statute.

(b) That said bill of complaint fails to state any facts entitling it to install or to maintain water meters upon or in the streets and alleys of defendant, City of Reno, with which to measure the quantity of water served or delivered to said City, or to the inhabitants thereof, in that it is not alleged or stated therein that plaintiff has the permission or consent of defendant, City of Reno, or of the Public Service Commission of the State of Nevada, or of any other authority whatever, to so install or maintain such water meters in or upon said places. [23]

(c) That said bill of complaint fails to allege or state any grant, provision, or term, contained in any franchise or franchises under which it has been acting and serving and distributing water to defendant, City of Reno, and to the inhabitants thereof, authorizing it to install or to maintain water meters upon or in the streets or alleys of said defendant for the purpose of measuring the quantity of water served or delivered to said City or to its inhabitants, or for any other purpose whatever, or at all.

(d) That it does not appear from plaintiff's bill of complaint that plaintiff's occupancy and use in the past of the streets and alleys of defendant, City of Reno, for the installation and maintenance of its instrumentalities for serving and distributing water by virtue of any grant,

franchise, or authority so to do or was exercised by plaintiff in any other way, or manner than that of a seizer and trespasser.

(e) That it does not appear from the facts alleged in plaintiff's bill of complaint that plaintiff now is, or ever has been engaged in the business of selling or furnishing water to defendant, City of Reno, or to the inhabitants thereof, but that upon the contrary it affirmatively appears therefrom that it now is, and at all times mentioned in its bill of complaint has been, no more than the agent of said defendant and its inhabitants for the diversion, transportation, distribution, and delivery of such water.

(f) That said bill of complaint fails to state facts sufficient to show any necessity whatever for the installation or maintenance of any water meters in or upon the streets or alleys of the defendant, City of Reno.

(g) That said bill of complaint does not state facts sufficient to show that the installation and maintenance [24] of water meters upon or in the streets and alleys of defendant, City of Reno, will not constitute an obstruction to the proper and reasonable use thereof by the said defendant and by the general public.

II.

That it affirmatively appears from the allegations of plaintiff's bill of complaint that plaintiff has no interest in the subject matter of said bill in that it appears therefrom that plaintiff is the mere agent of defendant, City of Reno, and of its in-

habitants in the diversion, transportation, distribution, and delivery of water to said city and its inhabitants and fails to allege that it is not or will not be fully compensated for its said services.

III.

That there is a nonjoinder of necessary parties in said bill of complaint in that it appears therefrom that the alleged grievances pleaded in said bill of complaint are imputable in uncertain part to the City of Sparks and its inhabitants and that said City of Sparks is not made a defendant in said action.

IV.

That said bill of complaint is multifarious in that it appears therefrom that the alleged wastage of water by the Cities of Reno and Sparks and by the respective inhabitants thereof and the consequent injury to plaintiff thereby constitutes a joint liability by the said municipalities and their respective inhabitants and not a several liability of defendant, The City of Reno, alone, or of the said last-named City or its inhabitants alone.

V.

That said bill of complaint is indefinite and uncertain [25] in the following respects, to wit:

(a) That it is impossible to ascertain therefrom whether plaintiff's alleged franchises are derivative from the State of Nevada, or the City of Reno, or the City of Sparks, or from all of either thereof.

(b) That it is impossible to ascertain therefrom what part or parts of plaintiff's plant equip-

ment for serving and delivering water to defendant, City of Reno, and its inhabitants, is maintained and operated by virtue of a franchise of franchises and what part thereof is maintained by virtue of mere occupancy, use, or claim or right.

VI.

That the restraining order issued in this action was improvidently issued in that the same was issued without notice to the opposite parties, or to either thereof, in the absence of any allegation or allegations in any affidavit or in the verified bill of complaint clearly showing specific facts that would result in immediate and irreparable injury, loss, or damage to plaintiff before notice could be served and a hearing had upon the application therefor.

VII.

That the restraining order issued in this action fails to define any injury and to state why it is irreparable and why it was granted without notice.

VIII.

That the restraining order issued in this action is in effect a judicial license enabling plaintiff to enlarge and increase its installation and operation of the particular subject matter of controversy between plaintiff and defendants and is not limited to preservation of the *statu quo* of such contro-

verted subject matter until the merits thereof can be heard and determined.

LE ROY F. PIKE,

Attorney for Defendants.

SARDIS SUMMERFIELD,

Solicitor for Defendants. [26]

[Title of Cause.]

MINUTES OF COURT—APRIL 24, 1930—
HEARING ON APPLICATION FOR IN-
JUNCTION PENDENTE LITE, ETC.

This being the time heretofore set for hearing on plaintiff's application for injunction *pendente lite*, and the same coming on regularly, Hon. Geo. B. Thatcher appeared for and on behalf of plaintiff; Messrs. LeRoy F. Pike and Sardis Summerfield appeared for the defendants. Upon stipulation of counsel the official reporter was called to report these proceedings upon the usual terms. Mr. Thatcher asked that plaintiff's application for injunction *pendente lite* be heard ahead of defendant's motion to dismiss complaint and to dissolve temporary restraining order, which was filed this day by Mr. Summerfield to which objection was made by Mr. Summerfield.

IT IS BY THE COURT ORDERED that plaintiff's application be heard at this time. Mr. Thatcher offered in evidence bill of complaint herein, which was admitted over objection and ordered marked Plffs. Ex. No. "A,"—considered read

into the record; also copy of minutes of County Commissioners of Washoe County, of date of December 14, 1874, offered, admitted over objection and ordered marked Plffs. Ex. No. "B"; also copy of minutes of County Commissioners of Washoe County, of date of March 5, 1879, offered, admitted over objection and ordered marked Plffs. Ex. No. "C"; also copy of deed from Reno Water Company [27] to Reno Water, Land and Light Company, dated Nov. 11, 1889, offered, admitted over objection and ordered marked Plffs. Ex. No. "D"; also copy of deed from Reno Water, Land and Light Company to Nevada Power, Light and Water Company, dated March 12, 1902, offered, admitted over objection and ordered marked Plffs. Ex. No. "E"; also copy of deed from Nevada Power, Light and Water Company to Reno Power, Light and Water Company, dated April 14, 1904, offered, admitted over objection and ordered marked Plffs. Ex. No. "F"; and also original deed from Reno Power, Light and Water Company to the Truckee River General Electric Company, dated June 30, 1922, offered, admitted over objection and ordered marked Plffs. Ex. No. "G." Defendants granted exceptions to the admittance of all of the aforesaid exhibits. Plaintiff rests on the evidence here introduced. No testimony being adduced by defendants the application for injunction *pendente lite* was submitted to and by the Court taken under advisement. Counsel here stipulated that defendants' motion to dismiss complaint and to dissolve temporary restraining order now come on for hear-

ing. After argument by counsel for the respective parties said motion was submitted to and by the Court taken under advisement. At the conclusion of argument by Mr. Thatcher he moved the Court that temporary injunction issue herein. Counsel for both parties filed with the Court their points and authorities used in this hearing. [28]

PLAINTIFF'S EXHIBIT "B."

MINUTES OF COUNTY COMMISSIONERS
OF WASHOE COUNTY—DECEMBER 14,
1874—ORDER GRANTING RIGHT TO
RENO WATER COMPANY TO LAY
PIPES FOR CONVEYING WATER.

The minutes of the County Commissioners of Washoe County on December 14, 1874, at page 176 offers the following:

“A petition was presented from various citizens of Reno and vicinity praying the Board to grant to the Reno Water Company the right to lay down water pipes in the streets and alleys of Reno, for the purpose of distributing and conveying water. Whereupon it was ordered that the Reno Water Company be granted the right of way to lay down pipes in the Streets and alleys of the town of Reno for the purpose of conveying and distributing water.”

[Endorsed]: No. G.-29. U. S. District Court, Nevada. Sierra Pacific Power Co., Plaintiff, vs.

City of Reno et al., Defendant. Plffs. Exhibit No. "B." Filed Apr. 24, 1930. E. O. Patterson, Clerk. By O. E. Benham, Deputy Clerk. [29]

PLAINTIFF'S EXHIBIT "C."

MINUTES OF COUNTY COMMISSIONERS
OF WASHOE COUNTY—MARCH 5, 1879—
ORDER GRANTING RENO WATER COM-
PANY RIGHT TO LAY WATER PIPES
IN TOWN OF RENO.

In the minutes of the County Commissioners of March 5, 1879, page 590, is found the following:

"It was ordered that the present owners of Reno Water Co., now represented to us by A. A. Evans, an owner in said water co., be, and is hereby granted the right of way and privilege of laying water pipes through the streets and alleys of said town of Reno in said Incorporated town, and that said company leave such ground as they may lay such pipes through in as good condition as prior to laying such pipes."

[Endorsed]: No. G.-29. U. S. District Court, Nevada. Sierra Pacific Power Co., Plaintiff, vs. City of Reno et al., Defendant. Plffs. Exhibit No. "C." Filed Apr. 24, 1930. E. O. Patterson, Clerk. By O. E. Benham, Deputy Clerk. [30]

PLAINTIFF'S EXHIBIT "D."

DEED OF CONVEYANCE.

RENO WATER CO.

to

RENO WATER, LAND & LIGHT CO.

This indenture, made this 11 day of November A. D. 1889, between the Reno Water Co., a corporation, the party of the first part, and the "Reno Water, Land and Light Company" a corporation, the party of the second part, both said corporations having been duly organized under the laws of the State of Nevada, with their principal places of business in Reno, Washoe County, State aforesaid, Witnesseth: That whereas said party of the first part, has acquired and is the owner of large property interests in Washoe County, Nevada, and more particularly in the town of Reno in said County and State; and whereas, the Board of Trustees of said party of the first part, duly assembled, duly passed the following resolutions: "It is resolved by the Board of Trustees of the Reno Water Company, a corporation, that it is for the best interests of said Company to sell, transfer and convey all its property of every nature and description in Washoe County, State of Nevada to the 'Reno Water, Land and Light Company,' a corporation, and C. C. Powning the President and J. F. Emmitt, the Secretary of the 'Reno Water Company' aforesaid, are hereby authorized and instructed to make, execute and deliver to said 'Reno Water, Land and

Light Company' for, in behalf of, and as the act of the 'Reno Water Co.,' corporation; a deed of conveyance of all and every part, nature and description of its property, both real and personal, and take therefor, and from said 'Reno Water, Land and Light Company,' corporation, and as the full [31] consideration for said conveyance, the sum of One Dollars, lawful money of the Government of the United States of America, and further: that the said President and Secretary, before the signing and ensealing and delivery of said Conveyance, to see that all debts and liabilities of said 'Reno Water Company' are properly cancelled and paid in full."

Now, Therefore, in pursuance of said resolution, and in consideration, of the sum of One Dollar, receipt of which is hereby acknowledged, the said party of the first part doth by these presents grant, bargain, sell, convey and confirm, unto the said party of the second part, forever, all its right, title and interest, both in law and equity, in and to all its watermains, water pipes, water valves and shut-offs now laid down in the streets of said town of Reno, also all its water mains and pipes and water valves laid down and leading from said town to that certain reservoir on Sec. 3, Tp. 19, N., R. 19 E., M. D. M., and always heretofore known and designated as the "Reno Water Companys reservoirs," together with all the rights of way through the lands of others, and through the streets of said town as obtained by said party of the first part, by reason of the laying of said watermains and

pipes aforesaid, together with all the right, title and interest of grantor in and to that certain reservoir located on Block 14, in the Western Addition to the town of Reno, and known as the Whitaker reservoir" and supplied with water from the Orr Water Ditch; also all the right, title and interest of grantor in and to that certain reservoir located near the State University, and known and designated as the University reservoir"; also all personal property of every [32] nature and description, belonging to, and now in the possession of grantor herein, consisting of about 4,000 feet of iron water pipes, ranging in diameter from three-quarters of one inch to eight inches, together with all tools, both of wood and iron, used in, and about the construction, maintenance and repairing of said grantor's system of water works; also, one iron filter, known as the "Arnold filter" excepting therefrom, such portions thereof as may from time to time, been heretofore sold, disposed of, or used in and about other portions of the works; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. To Have and to Hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, heirs and assigns forever.

In Witness Whereof, the said party of the first part, by resolution of its Board of Trustees, hath caused these presents to be subscribed by its Presi-

dent and Secretary the day and year first above written.

RENO WATER CO.

Per C. C. POWNING,

President.

J. F. EMMITT,

Secretary.

State of Nevada,

County of Washoe,—ss.

On this sixteenth day of November, A. D. one thousand eight hundred and eighty-nine, before me, T. V. Julien, County Clerk and *ex-office* Clerk of the District Court, State of Nevada, in and for said Washoe County, personally appeared [33] C. C. Powning, President of the Reno Water Company, Corporation, and J. F. Emmitt, Secretary of said Reno Water Company, corporation, personally known to me to be the individuals described in and who executed the annexed Instrument, who each as such President and Secretary, duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned. Witness my hand and Seal of said Court, at Reno, in said County, the day and year in this certificate first above written.

[Seal]

T. V. JULIEN,

Clerk.

Recorded at request of C. C. Powning. Filed Nov. 16, A. D. 1889, at 45 min. past 3 P. M.

JNO. B. WILLIAMS,

County Recorder.

[Endorsed]: H.-33. No. G.-29. U. S. District Court, Nevada. Sierra Pacific Power Co., Plaintiff, vs. City of Reno et al., Defendant. Pltffs. Exhibit No. "D." Filed Apr. 24, 1930. E. O. Patterson, Clerk. By O. E. Benham, Deputy Clerk. [34]

PLAINTIFF'S EXHIBIT "E."

DEED OF CONVEYANCE.

(United States Int. Rev. stamps \$121.25 canceled.)

THE RENO W. L. & L. CO.

to

NEVADA P. L. & W. CO.

This Indenture, made this twelfth day of March, in the year of our Lord, one thousand nine hundred and two, Between The Reno Water Land and Light Company, a corporation, duly incorporated under the laws of the State of Nevada, the party of the first part, and Nevada Power Light and Water Company, a corporation duly incorporated under the laws of the State of California, the party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of Ten Dollars, in gold coin of the United States of America, and other good and valuable considerations in hand paid to the said party of the first part by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the

second part, and to its successors and assigns forever, all those certain lots, pieces or parcels of land, situate, lying and being in the County of Washoe, State of Nevada and bounded and particularly described as follows, to-wit:

1—All those certain lots numbered thirty-eight (38), thirty nine (39), forty (40), forty one (41), forty two (42), forty three (43) and forty four (44), situated, lying and being in the town of Reno, Washoe County, State of Nevada, and known and designated as River Front Lots, east from Virginia Street in the Town of Reno, Nevada, on the official map of said County.

2—All that certain piece of land situated, lying and being in Washoe County, State of Nevada, described as follows: [35] Commencing at a point 1.71 chains north from the quarter Section corner between Sections 2 and 3, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, and running thence north $61^{\circ} 45'$ west 13.57 chains; thence south $2^{\circ} 15'$ west 17 chains: thence $73^{\circ} 30'$ east 13.11 chains; thence north 6.84 chains to the place of beginning.

3—That certain ditch known and designated as the Highland Ditch, on the north side of the Truckee River, heading at or near the Rail Road Bridge near Verdi, Washoe County, State of Nevada, and more particularly described in two instruments of record in the office of the County Recorder of Washoe County, State of Nevada, the one in Book F. of Miscellaneous Instruments at page 164, and the other in Book F. of Miscellaneous Instruments

at page 569 to which instruments and the record thereof special reference is hereby made.

4—That certain ditch and dam known as the Electric Light Ditch and Dam, situate on the south side of the Truckee River in Reno, running through the lands of Joseph Frey and Murray Brothers, and more particularly described in the certificate of location recorded in Volume F, on page 393 of the Miscellaneous Records in the office of the Recorder of Washoe County, State of Nevada, to which instrument and the record thereof special reference is hereby made.

5—All that certain lot, piece or parcel of land situated in Washoe County, State of Nevada, beginning at a point south $83^{\circ} 30'$ West (Magnetic Variation $17^{\circ} 30'$ East) in the north east quarter of the north east quarter of Section 15 distant 173 feet from the corners of Sections 10, 11, 14, and 15 in Township 19 North, [36] Range 19 East, Mount Diablo Base and Meridian; thence running west 311 feet and 3 inches; thence south 160 feet, thence east 233 feet and 3 inches and thence north 26° east 178 feet and 3 inches to the point of beginning.

6—All that certain lot, piece or parcel of land situated in Washoe County, State of Nevada, beginning at the center of the Electric Light Bridge at its intersection with the south bank of the Truckee River in Lot 2 of Section 15, Township 19 North, Range 19 East, Mount Diablo Base and Meridian; and running thence due south 263 feet, thence north $58\text{-}1/2^{\circ}$ East 325 feet to a mound of stone; thence

due north 125 feet to the south bank of the Truckee River; and thence westerly and along the south bank of said river to point of beginning.

7—The northwest quarter of the south west quarter of Section 2, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, in Washoe County, State of Nevada.

8—The fractional north east quarter of the South west quarter of Section 2, Township 19 North, Range 19 East, Mount Diablo Base and Meridian in Washoe County, State of Nevada.

9—Also all buildings, superstructures, machinery and apparatus for generating and distributing electric current or for making and distributing illuminating or fuel gas, now owned by the said party of the first part; also all poles, wires, mains, lamps, motors and lighting and distributing apparatus for electric light and all gas mains and pipes, lamps, posts, meter fixtures and other lighting and distributing apparatus, now owned by said party of the first part: also all reservoirs, pipes, aqueducts, flumes, ditches, mains, rights of way, franchises, easements, things in action, stock, bonds or other sureties, contracts, [37] claims and demands now owned by said party of the first part together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits, income, earnings, privileges, immunities and things incorporeal or otherwise growing out of or appertaining to said property of said party of the first

part; and also all other property of whatsoever nature and description, now owned by said party of the first part and also all the estate, interest and claim whatsoever in law as well as in equity, of the said party of the first part, in and to the above described property or any part thereof.

To Have and Hold, all and singular the said premises, together with the appurtenances unto the said party of the second part and to its successors and assigns forever.

In Witness Whereof, the said party of the first part has caused its corporate name and seal, to be hereunto affixed the day and year first above written in accordance with a resolution of its Board of Trustees.

THE RENO WATER LAND AND LIGHT
COMPANY.

By P. L. FLANIGAN,
(Corporate Seal) President.

And W. L. BECHTEL,
Secretary.

Signed, sealed and delivered in the presence of

State of Nevada,
County of Washoe,—ss.

On this twenty first day of March in the year of our Lord one thousand nine hundred and two, before me, J. A. Bonham [38] a Notary Public in and for the County of Washoe, duly commissioned and sworn, personally appeared P. L. Flanigan,

known to me to be the President and W. L. Bechtel, known to me to be the Secretary of The Reno Water Land and Light Company, the corporation described in, and which executed the annexed instrument, and they acknowledged to me that such corporation executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at Reno, in said County, the day and year in this certificate first above written.

[Seal] J. A. BONHAM,
Notary Public in and for Washoe County, State
of Nevada.

Recorded at the request of W. L. Bechtel. Filed Mar. 25, A. D. 1902, at 01 mins. past 11 o'clock, A. M.

B. C. SHEARER,
County Recorder.

“22” 493.

[Endorsed]: No. G.-29. U. S. District Court, Nevada. Sierra Pacific Power Company, Plaintiff, vs. City of Reno et al., Defendant. Pliffs. Exhibit No. “E.” Filed Apr. 24, 1930. E. O. Patterson, Clerk. By O. E. Benham, Deputy Clerk. [39]

PLAINTIFF'S EXHIBIT "F."

DEED OF CONVEYANCE.

NEVADA POWER, LIGHT & WATER CO.

to

RENO POWER, LIGHT & WATER CO.

This indenture made this Fourteenth day of April, 1904, by and between the Nevada Power, Light and Water Company, a corporation, duly organized, created and existing under and by virtue of the laws of the State of California, and having its principal place of business in San Francisco, California, the party of the first part, and the Reno Power, Light and Water Company, a corporation, duly organized, created and existing under and by virtue of the laws of the State of California, and having its principal place of business in San Francisco, California, the party of the second part, WITNESSETH:

Whereas, on the Fourth day of April, 1904, a meeting of the stockholders of the said Nevada Power, Light and Water Company duly called and assembled for the purpose of consenting by a vote thereat to the sale, assignment, transfer and conveyance of all of the business, franchises and properties, as a whole, of said Nevada Power, Light and Water Company, was duly convened and held and there were present and represented thereat stockholders of said Nevada Power Light and Water Company, holding of record more than two thirds

of the issue (and also *fo* the subscribed) capital stock of the said Nevada Power Light and Water Company, and

WHEREAS, at said last named meeting a resolution was duly and regularly adopted by an affirmative vote of said stockholders of said *Nevada Power Light and Water Company*, holding of record more than two thirds of the issued (and also of the subscribed) capital stock of said Nevada Power Light and Water Company [40] granting and giving consent that all the business, franchises and properties as a whole of the said Nevada Power Light and Water Company be sold, assigned, transferred, granted and conveyed to said Reno Power, Light and Water Company, for a good and valuable consideration, approved and consented to at said meeting by said vote last mentioned, and

WHEREAS, at a meeting of the Board of Directors of said Nevada Power, Light and Water Company duly called and convened on the Fourth day of April, 1904 a resolution was unanimously adopted authorizing and directing the execution, assignment and delivery by said Nevada Power, Light and Water Company of assignments, transfers, bills of sale, conveyances, and granting of all the business, franchises, and properties as a whole, of said Nevada Power, Light and Water Company to said Reno Power Light and Water Company, and all such other instruments in the premises as may be necessary, proper and convenient and directing and authorizing P. L. Flanigan and W. L. Bechtel, President and Secretary respectively of

said Nevada Power Light and Water Company, to execute, acknowledge and deliver such assignments, transfers, bills of sale, conveyances and grants in the premises in accordance with said resolution so adopted at said stockholders' meeting above referred to.

NOW THEREFORE, in consideration of the premises and the sum of Ten Dollars to the first party by the second party in hand paid and of the consideration aforesaid, the said party of the first part does hereby sell, assign, transfer, convey and grant, unto the said Reno Power, Light and Water Company, its successors and assigns forever, all the business, franchises and properties, as a whole, of the said Nevada Power, Light and Water [41] Company whatsoever the same may be and wheresoever the same may be situated, and under whatsoever title or right the same may be held or claimed and particularly all the following described property, to wit:

I.

The Northwest quarter of the Southwest quarter of Section 2, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, in Washoe County, State of Nevada.

All that certain lot, Piece or parcel of land situated in the Town of Reno, Washoe County, State of Nevada, described as follows:

Beginning at the point on the North line of Fourth Street, distant thereon one hundred and fifty (150) feet easterly from the easterly line of Eureka Avenue, and running thence easterly and along the

North line of Fourth Street to the West line of Alameda Avenue, thence Northerly and along the said west line of Alameda Avenue four hundred and ten (410) feet and six (6) inches to the south line of Fifth Street, thence westerly along the North line of Fifth Street to a point distant thereon fifty-five (55) feet easterly from the east line of Eureka Avenue, thence southerly to the place of beginning. Being a portion of Block 2 of Morrill's addition to Reno.

III.

All those certain lots numbered thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43) and forty-four (44), situated, lying and being in the Town of Reno, Washoe County, State of Nevada, and known and designated as River Front lots east from Virginia Street in the Town of Reno, Nevada, on the official map of said County. [42]

IV.

All that certain piece of land situated, lying and being in Washoe County, State of Nevada, described as follows:

Commencing at a point 1.71 chains North from the quarter section corner between Sections 2 and 3, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, and running thence North 61 degrees 45' west 13.57 chains, thence south 2° 15' west 17 chains, thence north 73° 30' East 13.11 chains, thence north 6.84 chains to the place of beginning.

V.

That certain ditch known and designated as the Highland Ditch, on the north side of the Truckee River, heading at or near the Railroad Bridge near Verdi, Washoe County, Nevada, and more particularly described in two instruments recorded in the office of the County Recorder of Washoe County, State of Nevada, the one in Book F of Miscellaneous Records at Page 164 and the other in Book F of Miscellaneous Records at page 569, to which instruments and the records thereof special reference is hereby made.

VI.

That certain ditch and dam known as the Electric Light Ditch and Dam, situated on the north side of the Truckee River in Reno, Washoe County, Nevada, running through the lands of Joseph Frey and Murray Brothers and more particularly described in the certificates of location recorded in Volume F on page 393 of the Miscellaneous Records in the office of the Recorder of Washoe County, State of Nevada, to which instrument and the record thereof special reference is hereby made.

VII.

All that certain lot, piece or parcel of land situated [43] in Washoe County, State of Nevada, beginning at a point south 83° 30' West (Magnetic variation 17° 30' East) in — the northeast quarter of the northeast quarter of Section fifteen (15), distant one hundred and seventy-three (173) feet from the corners of Sections ten (10), eleven (11),

fourteen (14) and fifteen (15), in Township nineteen (19) north, range nineteen (19) East, Mount Diablo Base and Meridian, thence running west three hundred and eleven (311) feet and three (3) inches, thence south one hundred and *sixth* (160) feet, thence east two hundred and thirty-three (233) feet and three (3) inches and thence north twenty-six (26) degrees East one hundred and seventy-eight (178) feet and three (3) inches to the point of beginning.

VIII.

All that certain lot, piece or parcel of land situate in Washoe County, State of Nevada, beginning at the center of the Electric Light Bridge at its intersection with the South Bank of the Truckee River in Lot 2 of Section 15, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, and running thence due South two hundred and sixty three (263) feet, thence North fifty eight and a half ($58\frac{1}{2}$) degrees east three hundred and twenty five (325) feet to a mound of stone, thence due North one hundred and twenty five (125) feet to the south bank of the Truckee River, and thence westerly and along the south bank of the said river to the point of beginning.

IX.

The fractional northeast quarter of the southwest Quarter of Section two (2), Township 19 North, Range 19 East, Mount Diablo Base and Meridian.

X. [44]

All that certain piece, lot or parcel of land, situated in Reno, Washoe County, State of Nevada, described *at follows*, to-wit:

Beginning at a point on the north line of Fourth Street distant thereon one hundred and fifty (150) feet easterly from the easterly line of Eureka Avenue and running thence easterly and along the north line of fourth street to the west line of Alameda Avenue, thence northerly and along the said west line of Alameda Avenue, four hundred and ten (410) feet and six (6) inches to the south line of Fifth Street, thence westerly and along the South line of Fifth Street to a point distant thereon fifty five (55) feet easterly from the east line of Eureka Avenue and thence southerly to the place of beginning.

Being a portion of Block two (2) in Morrill's Addition to the Town of Reno, Washoe County, Nevada, as per official plat or map thereof on file in the office of the County Recorder of Washoe County, Nevada.

XI.

All those certain easements, privileges, rights and interest granted to the party of the first part by J. Gault and particularly described in that certain deed from said J. Gault to the party of the first part, dated February 8th, 1902, and recorded in Volume 22 of Deeds at page 613, Records of Washoe County, Nevada.

XII.

All those certain easements, privileges, rights and interests granted to the party of the first part by James Sullivan and particularly described in that certain deed from [45] said James Sullivan to the party of the first part, dated February 8th, 1902, and recorded in Volume 22 of Deeds at page 613, Records of Washoe County, Nevada.

XIII.

All that certain parcel of land, situated, lying and being in the County of Washoe, State of Nevada, and described as follows, to-wit:

Beginning at point number one (1) whence the quarter section corner between Sections two (2) and three (3) of Township Nineteen (19) North, Range Nineteen (19) East, M. D. B. M. bears south sixty (60°) degrees twenty four (24) minutes East, nine hundred and ten (910) feet; thence south eighty six (86) degrees, fifty (50) minutes west three hundred and sixty (360) feet to a point number two (2), thence south two (2) degrees, forty (40) minutes West one hundred and twenty one (121) feet, six (6) inches to a point number three (3), thence north eighty six (86) degrees fifty (50) minutes east three hundred and sixty (360) feet to a point number four (4), thence north two (2) degrees forty (40) minutes east one hundred and twenty one (121) feet six (6) inches to the place of beginning. Containing one (1) acre and situate in the south east one quarter ($\frac{1}{4}$) of northeast one quarter ($\frac{1}{4}$) of northeast one quarter ($\frac{1}{4}$) of

Section 3, Township Nineteen (19) North, Range Nineteen (19) East, M. D. B. M.

XIV.

That certain lot of land, situated, lying and being in the County of Washoe, State of Nevada and described as follows, to-wit:

Commencing at the center of Section sixteen (16) in [46] Township nineteen (19) North, Range eighteen (18) East, M. D. B. & M. and running thence east on the north line of the south-east quarter of said section 16, eight hundred and eighty five (885) feet to the point of beginning, thence running south at right angles six hundred and sixty (660) feet, thence east at right angles six hundred and sixty (660) feet; thence north at right angles six hundred and sixty (660); thence west at right angles six hundred and sixty (660) feet to the place of beginning, being ten (10) acres of land in North one half ($\frac{1}{2}$) of South East one quarter ($\frac{1}{4}$) of said Section 16, Township 19 North, Range 19 East.

XV.

All that certain piece of land, situate, lying and being in the County of Washoe, State of Nevada, and described as follows:

All that piece of land containing thirty (30) acres and situated in the south west one quarter ($\frac{1}{4}$) of the Northeast one quarter ($\frac{1}{4}$) and the North west one quarter ($\frac{1}{4}$) and of the south east one quarter ($\frac{1}{4}$) of Section Three (3), Township Nineteen (19) North, Range nineteen (19) East,

M. D. B. M. below the ditch known as "Highland Ditch" and described as follows:

Beginning at a point on the east bank of the said Highland Ditch, from which the quarter section corner on the north boundary of Section 3 Township 19N., Range 19 E., bears North $14^{\circ} 57'$ West, distant 1603, feet thence running south $22^{\circ} 54'$ west along the east bank of said "Highland Ditch" 487.2 feet, thence south $35^{\circ} 10'$ west 118.7 feet; thence south $41^{\circ} 57'$ west 231.5 feet to a point on the bank of said ditch at the intersection with the west boundary of the east half of said section three; thence south and [47] along said west boundary line 897.2 feet thence at a right angle east 917 feet; thence at a right angle north 1615.21 feet, thence at a *at a* right angle west 504.3 feet to the place of beginning.

Also, a right of way for a pipe line, to be laid two feet under ground from the south boundary of the land hereinbefore described to the limits of the said City of Reno, also the right of way for a pipe line from the reservoir now situated in the land hereinbefore described to the present reservoir of said Nevada Power Light and Water Company, also, a right of way for a waste water ditch from the land hereinbefore described.

XVI.

All that certain piece of land situated, lying and being in the County of Washoe, State of Nevada, and being described as follows, to-wit:

All that portion of the southwest one quarter

($\frac{1}{4}$) of the south east one quarter ($\frac{1}{4}$) of Section nine (9), Township nineteen (19) North, range eighteen (18) east, M. D. B. M. lying south of the Truckee River.

Also, all buildings, superstructures, machinery and apparatus for generating and distributing electric current or for making and distributing illuminating or fuel gas, poles, wires, mains, lamps, motors and lighting and distributing apparatus for electric lights, gas mains and pipes, lamp posts, meter fixtures and other lighting and distributing apparatus for electric light, reservoirs, pipes, aqueducts, flumes, ditches, mains, service pipes, holders, franchises, easements, rights of way, things in action, stocks, bonds or other securities, contracts, claims and demands of the Power Company whether now owned or hereafter to be acquired by it together with all and singular the tenements, [48] hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, profits, income, earnings, privileges, immunities and things incorporeal or otherwise growing out of or appertaining to said property of the said Power Company, and also all the estate, interest and claim whatsoever in law as well as in equity which the said Power Company has in and to the premises or any part thereof, hereby conveyed unto the said Trustee, its successors and assigns, and the full power on the part of the Trustee, so far as it lawful may, to succeed to and enjoy all the rights, privileges, immunities

and things corporate and otherwise of said Power Company.

And also all assets, contracts, franchises, privileges, properties, real, personal and mixed, business and good will as a whole, of every kind, name and nature, belonging to the party of the first part at this date, or in which it may have any right, title, or interest whether the same is herein particularly described or not, or which it may hereafter acquire, or whether the same is held by third persons or other corporations in trust or otherwise for the party of the first part, or not.

It being understood and agreed that the properties hereby conveyed are subject to a bonded indebtedness of \$300,000.00 which the said party of the second part assumes and agrees to pay and discharge together with all the obligations and liabilities of the said party of the first part.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. [49]

To have and to hold, all and singular the said premises and all of the said property, real, personal and mixed, rights, privileges and franchises, together with the appurtenances unto the said party of the second part and to its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be exe-

cutted by its officers thereunto duly authorized, and the seal of this corporation to be affixed the day and year first herein above written.

NEVADA POWER, LIGHT AND
WATER COMPANY.

(Corporate Seal) By P. L. FLANIGAN, Pres.

By W. L. BECHTEL, Sec.

State of California,

City and County of San Francisco,—ss.

On this 14th day of April, A. D. one thousand nine hundred and four, before me, D. B. Richards, a Notary Public in and for said City and County and State residing therein, duly commissioned and sworn, personally appeared P. L. Flanigan, known to me to be the President, and W. L. Bechtel, known to me to be the Secretary of the Nevada Power, Light and Water Co., the corporation described in, and whose name is subscribed to the within and annexed instrument, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and official seal, the day and year in this certificate first above [50] written.

(Seal)

D. B. RICHARDS,

Notary Public in and for said City and County of San Francisco, State of California, 14 Sansome Street.

Recorded at the request of W. L. Bechtel. Filed
Apl. 19, A. D. 1904, at 35 mins. past 10 o'clock A. M.

C. H. STODDARD,
County Recorder.

A. C. C. Verified.
25-162 et seq.

State of Nevada,
County of Washoe,—ss.

I, C. H. Stoddard, County Recorder in and for
said Washoe County, Nevada, do hereby certify
the foregoing (consisting of ten pages) to be a
full, true and correct copy of the record of the deed
from Nevada Power, Light and Water Company,
to Reno Power, Light and Water Company, which
was filed for record in my office April 19th, 1904,
at 10:35 o'clock A. M., and is recorded in Book
"25" of Deeds, at page 162 thereof, Records of
Washoe County, Nevada.

Witness my hand and Official Seal at my office
in the City of Reno, this 15th day of February, A. D.
1912.

(Seal)

C. H. STODDARD,
County Recorder.

[Endorsed]: No. G.-29. U. S. District Court,
Nevada. Sierra Pacific Power Co., Plaintiff, vs.
City of Reno et al., Defendant. Plffs. Exhibit No.
"F." Filed Apr. 24, 1930. E. O. Patterson,
Clerk. By O. E. Benham, Deputy Clerk. [51]

PLAINTIFF'S EXHIBIT "G."

DEED OF CONVEYANCE.

THIS INDENTURE made this 30th day of June, 1922, by and between Reno Power, Light and Water Company, a corporation organized and existing under and by virtue of the laws of the State of California, (party of the first part), and The Truckee River General Electric Company, a corporation organized and existing under and by virtue of the laws of the State of Maine (party of the second part).

WITNESSETH:

The party of the first part, for and in consideration of ten dollars (\$10) and other valuable considerations, the receipt of which is hereby acknowledged, does by these presents grant, bargain and sell unto the party of the second part, its successors and assigns forever, all property, real and personal, franchises and assets now owned or to which the said party of the first part is now or may at any time hereafter become entitled, including particularly, but without restricting the generality of the foregoing grant, the following described property situated in Washoe County, Nevada, and more particularly described as follows:

1. 1.10 A. out of Lot 2 in NW.¼ of Sec. 15, Tp. 19 N., R. 19 E., Described as beginning at the center of the South end of the Electric Light Bridge over the Truckee River, thence due South 263 ft.; thence N. 67° 57' E. 518.67

ft.; thence due N. 125 ft. to the South Bank of River; thence W. to point of beginning, West 30 ft. reserved for roadway.

2. Part of Lot 6 of Sec. 10, Tp. 19 N., R. 19 E. described as beginning at the SE. corner of Sec. 10; thence W. 225 ft.; thence n to Truckee River; thence easterly along South bank to E. line of Sec. 10; thence S. to beginning.
3. Part of Lot 6 of Sec. 10, Tp. 19 N., R. 19 E. described as beginning on the S. line of Sec. 10, 965 ft. 6 in. W. from SE. corner; [52] thence N. 8° E. 58 ft. N. $85^{\circ} 30'$ E. 312 ft., N. 76° E. 130 ft. to Truckee River; thence E. along River bank 67 ft. S. 76° W. 193 ft.; S. $85^{\circ} 30'$ W. 194 ft.; S. 8° W. 33 ft. to South line of section, W. 25 ft. to beginning.
4. 1.131 A. out of Frac. part NE $\frac{1}{4}$ of Sec. 15, Tp. 19 N., R. 19 E. described as beginning at corner No. 1, a monument on Sec. line between 10 and 15, whence the section corner common to Secs. 10, 11, 14 and 15, Tp., 19 N., Range 19 E., bears N. $87^{\circ} 58'$ E. 101.10 ft.; running thence S. $87^{\circ} 58'$ W. 34.90 ft. to a monument for corner; thence S. $29^{\circ} 25'$ W. 5.91 ft. to a monument for corner; thence S. $85^{\circ} 07'$ W. 340.34 ft. to a monument for corner; thence S. $0^{\circ} 25'$ E. 138.70 ft. to a monument for corner; thence N. $88^{\circ} 54'$ E. 282.84 ft. to a monument for corner;

thence N. $28^{\circ} 53'$ E. 192.72 ft. to a point of beginning.

5. A portion of Sec. 15, Tp. 19 N., R. 19 E. described as follows: "Beginning at corner No. 1, identical with the NW. corner of Reno sub-station property, whence section corner, common to Secs. 10, 11, 14 and 15, Tp. 19 N., Range 19 E., bears N. $85^{\circ} 21'$ E. 479.5 ft.; thence S. $87^{\circ} 29'$ W. 393.60 ft. to a monument; thence N. $0^{\circ} 27'$ W. 5 ft. to a monument near the NE. corner of penstock regulator; thence S. $88^{\circ} 27'$ W. 68 ft. to a monument for corner; thence N. $2^{\circ} 02'$ W. 19.80 ft. to a monument on said line between sections 10 and 15, from which corner common to Secs. 10, 11, 14 and 15 bears N. $87^{\circ} 58'$ E. 940.50 ft. distant; thence S. $87^{\circ} 58'$ W. along said section line 59.95 ft. to a monument for corner; thence S. $2^{\circ} 0'$ E. 14 ft. to a monument for corner; thence S. $87^{\circ} 56'$ W. 131.33 ft. to a monument for corner near west end of the North Spillway; thence S. $79^{\circ} 35'$ W. 127.57 ft. to a monument for a corner on N. line of the land occupied by the flume of the party of the first part; thence along said north line of the land occupied by the flume; S. $72^{\circ} 25'$ W. 25.92 ft.; thence S. $69^{\circ} 46'$ W. 25.89 ft.; thence S. $66^{\circ} 23'$ W. 25.92 ft.; thence S. $63^{\circ} 21'$ W. 25.65 ft.; thence S. $61^{\circ} 59'$ W. 25.39 ft.; thence S. $60^{\circ} 42'$ W. 25.40 ft.; thence S. $59^{\circ} 16'$ W. 25.39 ft.; thence

S. $58^{\circ} 04'$ W. 25.32 ft.; thence S. $57^{\circ} 08'$ W. 25.41 ft.; thence S. $55^{\circ} 16'$ W. 25.34 ft.; thence S. $54^{\circ} 49'$ W. 25.20 ft.; thence S. $53^{\circ} 54'$ W. 25.22 ft.; thence to a monument; thence S. $53^{\circ} 20'$ W. 90.27 ft. to a monument; thence S. $52^{\circ} 11\frac{1}{2}'$ W. 80.31 ft. to a monument; thence S. $51^{\circ} 23'$ W. 374.52 ft. to a monument; thence S. $51^{\circ} 50\frac{1}{2}'$ W. 149.62 ft. to a monument which is placed 120 ft. more or less northeasterly from the southwest end of the flume of the party of the first part, leading from its ditch to its penstock; thence N. $87^{\circ} 58'$ E. along said boundary line 28.86 ft. to a monument on the south of the land occupied by said flume; thence along south line of the land occupied by said [53] flume N. $51^{\circ} 56'$ E. 126.17 ft. to a monument for corner; thence N. $51^{\circ} 23'$ E. 374.50 ft. to a monument for corner; thence N. $52^{\circ} 11\frac{1}{2}'$ E. 80.02 ft. to a monument; thence N. $53^{\circ} 13'$ E. 90 ft. to a monument for corner; thence N. $53^{\circ} 54'$ E. 25 ft.; thence N. $54^{\circ} 49'$ E. 25 ft.; thence N. $55^{\circ} 16'$ E. 25 ft.; thence N. $57^{\circ} 08'$ E. 25 ft.; thence N. $58^{\circ} 04'$ E. 25 ft.; thence N. $59^{\circ} 16'$ E. 25 ft.; thence N. $60^{\circ} 42'$ E. 25 ft.; thence N. $61^{\circ} 59'$ E. 25 ft.; thence N. $63^{\circ} 21'$ E. 25 ft.; thence N. $66^{\circ} 23'$ E. 25 ft.; thence N. $69^{\circ} 46'$ E. 25 ft.; thence N. $72^{\circ} 25'$ E. 25 ft. to a monument for corner; thence N. $86^{\circ} 58'$ E. 253.63 ft. to a monument for corner; thence S.

82° 05' E. 51.17 ft. to a monument for corner; thence N. 1° 25' W. 6 ft. to a monument for corner near the SW. corner of the penstock regulator; thence N. 89° 20' E. 59.99 ft. to a monument for corner, near the SE. corner of the penstock regulator; thence N. 0° 27' W. 5 ft. to a monument for corner; thence N. 87° 30' E. 410.20 ft. to a monument for corner on the south side of pipe line, and on the west boundary line of the Reno sub-station property; thence N. 0° 25' W. 18.75 ft. to the point of beginning."

6. 30 A. out of the SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 3, Tp. 19 N. R. 19 E. described as beginning at the E. bank of the Highland Ditch at a point which is S. 140° 57' E. 1603 ft. from the quarter corner on the N. line of Sec. 3; thence southwesterly along said ditch to the center N. and S. line of said Sec. 3; thence S. 897 ft. 2 in. E. 917 ft., N. 1615.21 ft., westerly 504 ft. 2 in. to point of beginning.

Excepting, however, from this conveyance and the operation thereof, ten acres sold or conveyed by the party of the first part to H. J. Pratt by deed dated May 1, 1919, and described as follows:

"Beginning at a point on the West boundary of the East half of Sec. 3, Tp. 19 N., R. 19 E., which point is distant 2283.6 ft. along the quarter section line south from the quarter

section corner on the North boundary of Sec. 3, Tp. 19 N. R. 19 E., thence running south along said West boundary line 880.4 ft., thence at a right angle East 419.2 ft., thence at a right angle North 776.3 ft., thence at a right angle West 3.36 ft., thence at a right angle north 289.6 ft., thence North $75^{\circ} 41'$ West 214.7 ft., thence South $29^{\circ} 48'$ West 52 ft., thence South $43^{\circ} 9'$ West 269.9 ft. to point of beginning, containing ten (10) acres, more or less; but excepting therefrom that certain irrigation ditch of an approximate capacity of seven cubic feet of water per second extending to the irrigation reservoir of the J. N. Evans Estate Company and the right of way for said ditch and the right to enter upon said parcel of land for the purpose of maintaining said ditch." [54]

7. 1 acre out of the SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Sec. 3, Tp. 19 N., R. 19 E. described as beginning at a point N. $60^{\circ} 24'$ W. 910 ft. from the quarter section corner between sections 2 and 3; thence S. $86^{\circ} 50'$ W. 360 ft. S. $2^{\circ} 40'$ W. 121 ft. 6 in. N. $86^{\circ} 50'$ E. 360 ft. N. $2^{\circ} 40'$ E. 121 ft. 6 in. to point of beginning.
8. 13.80 A. out of the E. $\frac{1}{2}$ of Sec. 3, Tp. 19 N., R. 19 E. used for Highland Ditch Reservoir and described as beginning 1.71 chains N. of the SE. corner of NE. $\frac{1}{4}$ of Sec. 3; thence N. $61^{\circ} 45'$ W. 13.57 chains S. $2^{\circ} 15'$ W. 17

chains N. $73^{\circ} 30'$ E. 13.11 chains N. 6.84 chains to point of beginning.

9. 10 A. out of the N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Sec. 16, Tp. 19 N., R. 18 E., and described as commencing at the center of Sec. 16, Tp. 19 N., R. 18 E., M. D. B. & M., and running thence east on the North line of the SE. $\frac{1}{4}$ of said Sec. 16, 885 ft. to the point of beginning; thence running south at right angles 660 ft.; thence running east at right angles 660 ft., thence running north at right angles 660 ft.; thence running west at right angles 660 ft to the place of beginning.
10. 3 A. more or less out of SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 9, Tp. 19 N., R. 18 E., all lying south of the Truckee River.

The above described parcels of land, numbered 1 to 10 inclusive, were conveyed to Reno Power, Light and Water Company, party of the first part herein, by deed of the Nevada Power, Light & Water Company, dated April 14, 1904 and recorded in Volume 25 of Deeds, at page 162, Records of Washoe County, Nevada, and as to parcels numbered 4 and 5 above also by corrective and confirmatory deed of Samuel Murray and wife, dated September 15, 1910, and recorded in Volume 38 of Deeds at page 312, Records of Washoe County, Nevada.

11. 115 A. more or less of the NE. $\frac{1}{4}$ of Sec. 16, Tp. 19 N., R. 18 E., described as beginning at the section corner common to Secs. 9, 10, 15 and 16, Tp. 19 N., R. 18 E., and running thence

along the section line between Secs. 9 and 16, N. $88^{\circ} 54'$ W. 1640.8 ft.; thence S. $12^{\circ} 52'$ W. 76.47 ft.; thence S. $71^{\circ} 13'$ W. 208.56 ft.; thence S. $24^{\circ} 14'$ W. 362.34 ft.; thence S. $40^{\circ} 55'$ W. 495.0 ft.; thence S. $7^{\circ} 24'$ E. 514.8 ft.; thence S. $26^{\circ} 30'$ E. 1342.54 ft.; thence S. $88^{\circ} 03'$ E. 1584.59 ft. to the quarter corner between Secs. 15 and 16; thence N. $1^{\circ} 45'$ E. 2581.78 ft. to the point of beginning and being a fractional part of the NE. $\frac{1}{4}$ of Sec. 16, Tp. 19 N., R. 18 E. Excepting therefrom 9.963 A. conveyed on April 30, 1915, to Central Pacific Railway Company and subject [55] to an easement of the same date to the above Company for right of way across a portion of the property described.

12. 3 A. more or less out of the NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 16, Tp. 19 N., R. 18 E., described as bounded on the N. by the flume of the Washoe Power & Development Company and on the E. by the Section line between Secs. 15 and 16, Tp. 19 N., R. 18 E., on the S. by a line 3 ft. southerly of a drainage ditch and on the W. by the land of the Reno Power, Light and Water Company.
13. A parcel of land beginning at a point in the center of the Truckee River, which point is 670 ft. more or less N. of the Section line between Secs. 14 and 23, Tp. 19 N., R. 18 E., and 455 ft. more or less E. of the Section line between Secs. 14 and 15, Tp. 19 N., R. 18 E., and running thence southerly $29^{\circ} 55'$ W. 500

ft.; thence S. $82^{\circ} 55'$ E. 200 ft.; thence N. $35^{\circ} 19'$ E. 181.66 ft.; thence S. $88^{\circ} 18'$ E. 328.5 ft.; thence N. $61^{\circ} 4'$ E. 74 ft.; thence N. $32^{\circ} 16'$ E. 396 feet; thence N. 51° E. 32.5 ft.; thence N. $10^{\circ} 2'$ W. 138 ft. to center rail post on E. side of the Washoe Power & Development Company's bridge across the Truckee River; thence in a southerly direction on the center line of the Truckee River, a distance of 690 ft. more or less to point of beginning, containing 6.8 A. more or less.

14. The fractional part of Lot 12 and the fractional part of the south half of Lot 11, Block "W" of Reno, which lie north of Mill Ditch.
15. Lots 17 and 18, Block 9 of Robinson's Addition to Sparks.
16. An easement for right of way 75 ft. in width for Washoe Power Ditch across S. $\frac{1}{2}$ of Sec. 15 and S. $\frac{1}{4}$ of Sec. 14, Tp. 19 N., R. 18 E., the center line of which begins at a point on Section line common to Secs. 15 and 16, 402.7 ft. S. from quarter corner between Secs. 15 and 16; thence on center line S. $49^{\circ} 25'$ E. 452.05 ft.; thence S. $57^{\circ} 12'$ E. 197.74 ft.; thence S. $40^{\circ} 40'$ E. 469.49 ft.; thence S. $59^{\circ} 26'$ E. 364.94 ft.; thence S. $51^{\circ} 27'$ E. 238.68 ft.; thence S. $68^{\circ} 49'$ E. 136.46 ft.; thence S. $37^{\circ} 45'$ E. 321.32 ft.; thence S. $59^{\circ} 23'$ E. 326.90 ft.; thence N. $88^{\circ} 7'$ E. 79.77 ft.; thence N. $54^{\circ} 49.5'$ E. 247.57 ft.; thence N. $65^{\circ} 8'$ E. 342.65 ft.; thence S. $82^{\circ} 30'$ E. 113.07 ft.; thence S. $65^{\circ} 24.5'$ E. 448.26 ft.;

thence S. 35° 3' E. 790.04 ft.; thence S. 50° 10' E. 214.40 ft.; thence S. 62° 45' E. 116.17 ft.; thence S. 86° 6' E. 256.19 ft.; thence N. 79° 38' E. 1346.90 ft.; thence N. 72° 54' E. 199.94 ft.; to penstock of Washoe Power Plant. [56]

17. An easement for right of way 75 ft. in width for flume line across NE.1/4 of SE.1/4 of Sec. 16, Tp. 19 N., R. 18 E., the center line of which commences at a point on E. side line of Sec. 16, about 460 ft. S. of quarter section corner between Secs. 15 and 16; running thence toward NW. corner of said NE.1/4 of SE.1/4 about 1000 ft. to boundary of E. side of lands of Reno Power, Light and Water Company.

The above described parcels of land and easements, numbered 11 to 17, inclusive, were conveyed to Reno Power, Light and Water Company, party of the first part herein, by deed of the Washoe Power & Development Company, dated July 19, 1915, and recorded in volume 46 of Deeds at page 259, Records of Washoe County, Nevada.

18. All of Block 3 of Morrill's Addition to Reno, acquired by the party of the first part herein from P. L. Flanigan by warranty deed dated November 24, 1905, and recorded in Volume 27 of Deeds at page 602, Records of Washoe County, Nevada.
19. Part of SW.1/4 of NE.1/4 and SE.1/4 of NW.1/4 of Sec. 12, Tp. 19 N., R. 19 E. described as follows: "Beginning at a point on the high

water line on the north bank of the Truckee River 355 ft. more or less east of the center line of the new Cattle Bridge, Reno, Nevada, and measured along the water's edge, said point being at the intersection of the southerly boundary of the Central Pacific Railroad Company's right of way and the high water line on the North bank of the River; thence along the southerly boundary of the Central Pacific Railroad Company's right of way 150 ft. more or less, measured in an easterly direction to a point on the south bank of the Sullivan and Kelley Ditch; thence along the south bank of said Sullivan and Kelley Ditch 40 ft. to a point on the south bank of said ditch; thence along the south bank of said ditch N. $83^{\circ} 20\frac{1}{2}'$ E. 165 ft. to a point; thence N. $88^{\circ} 28\frac{1}{2}'$ E. 342.7 ft. to a point 40 ft. north more or less of the south bank of the Old Power Ditch; thence N. $82^{\circ} 37\frac{1}{2}'$ E. 686 ft. to a point opposite the end of the Old Power Ditch 40 ft. north more or less from the south bank of the said ditch; thence N. $84^{\circ} 26\frac{1}{2}'$ E. 329.8 ft. to a point in center and at end of old stone wall, 120 ft. more or less from the water's edge; thence N. $86^{\circ} 23\frac{1}{2}'$ E. 330 ft. more or less to North and South boundary line between land acquired from Taylor and Fulton by the Reno Brewing Company, Incorporated, and that land formerly owned by the Crystal Ice and Cold Storage Com-

pany; thence along this boundary line 100 ft. more or less measured [57] in a southerly direction to the high water line of the north bank of the Truckee River; thence along the high water line on the north bank of the Truckee River to the point of beginning."

Acquired by the party of the first part herein from Reno Brewing Company by warranty deed dated June 2, 1910, and recorded in Volume 37 of Deeds at page 488, Records of Washoe County, Nevada.

20. 0.17 A. out of SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Sec. 12, Tp. 19 N., R. 19 E. described as beginning at a point on the high water line of the south bank of the Truckee River S. $89^{\circ} 07'$ E. 125 ft. from a point on the center line of the New Cattle Bridge; thence N. $73^{\circ} 23'$ E. 108 ft. more or less along the high water line to a point in line with a fence running in a northerly and southerly direction; thence S. $0^{\circ} 42'$ E. 83.5 ft. to a point on the fence line; thence S. $88^{\circ} 51'$ W. 105 ft. to a point; thence N. $0^{\circ} 07'$ W. 53.5 ft. more or less to point of beginning.

Acquired by the party of the first part herein from Reno Brewing Company by warranty deed dated June 2, 1910, and recorded in Book 37 of Deeds at page 488, Records of Washoe County, Nevada.

21. The NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Sec. 36, Tp. 20 N., R. 19 E. containing

80 A. more or less, acquired by the party of the first part herein from G. A. Campbell by warranty deed dated August 23, 1911.

22. NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Sec. 36, Tp. 20 N., R. 19 E. containing 160 A. more or less, acquired by the party of the first part herein from P. L. Flanigan by warranty deed dated November 24, 1905, and recorded in Volume 27 of Deeds, at page 602, Records of Washoe County, Nevada.

23. Filter plant site consisting of 0.37 A. more or less in S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of Sec. 3, Tp. 19 N., R. 19 E. described as beginning at a point N. 74° W. 1363 ft. from quarter corner common to Secs. 2 and 3; said corner being located just E. of Highland Reservoir on boundary to City of Reno (also said point of beginning is N. 37° 57' W. 2133 ft. from $\frac{1}{8}$ corner next S. from above quarter corner and common to Secs. 2 and 3 on boundary to City of Reno); running thence N. 100 ft.; thence E. 160 ft.; thence S. 100 ft.; thence W. 160 ft. to point of beginning.

Conveyed to the party of the first part herein from G. A. Campbell by deed dated July 7, 1915, and recorded in Vol. 46 of Deeds, at page 236, -Records of Washoe County, Nevada.

24. An unused right of way across a portion of Sec. 6, Tp. 19 N., R. 20 E., described as beginning at the water tank site located on

Block 4 and extending easterly across a portion of Block 4 and E. along or near the center of Overland Street to and across [58] Block 7 to W. line of Sec. 5, a distance of 1700 ft. more or less, intersecting section line between Secs. 5 and 6 at an angle of 90° and distant 170 ft. N. of SW. corner of Sec. 5.

Rights of Washoe Deep Well Water Company conveyed to the party of the first part therein by quitclaim deed dated July 19, 1915, and recorded in Vol. 46 of Deeds, at page 257, Records of Washoe County, Nevada.

25. A strip of land 40 ft. in width, extending along the extreme S. side of the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 2, T. 19 N., R. 19 E., M. D. M., the said strip beginning on the western boundary line of said 40 A. tract, extending E. to, stopping at, and intersecting the "Long Valley Wagon Road," or what is now known as North Sierra Street, acquired by the party of the first part herein from the J. N. Evans Estate Company by deed dated August 11, 1920, and recorded in Volume 56 of Deeds, at page 369, Records of Washoe County, Nevada.

Also all buildings, superstructures, machinery and apparatus for generating and distributing electric current or for making and distributing illuminating or fuel gas, poles, wires, mains, lamps, motors and lighting and distributing apparatus for electric lights, gas mains and pipes, lamp posts, meter fixtures and other lighting and distributing

apparatus for electric light, reservoirs, pipes, aqueducts, flumes, ditches, mains, service pipes, holders, franchises, easements, rights of way, things in action, stocks, bonds or other securities, contracts, claims and demands of the party of the first part whether now owned or hereafter to be acquired by it, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, profits, income, earnings, privileges, immunities and things incorporeal or otherwise growing out of or appertaining to said property of the said party of the first part, and also all the estate, interest and claim whatsoever in law as well as in equity [59] which the said party of the first part has in and to the premises or any part thereof hereby conveyed unto the said party of the second part, its successors and assigns, and the full power on the part of the party of the second part, so far as it lawfully may, to succeed to and enjoy all the rights, privileges, immunities and things corporate and otherwise of said party of the first part.

The properties or portions thereof, hereinabove described and hereby conveyed, or intended to be conveyed, are subject, but only in so far as the same may, by the terms thereof attach thereto, to the liens and provisions of the two following described mortgages:

1. First Mortgage given by Nevada Power, Light and Water Company to Mercantile Trust Company, San Francisco, California, dated

April 1, 1902, and recorded in Book Q of Real Mortgages, at page 161, Records of Washoe County, Nevada.

2. First Consolidated Mortgage given by Reno Power, Light and Water Company to Mercantile Trust Company, San Francisco, California, dated July 1, 1904, and recorded in Volume O of Real Mortgages, at page 574, Records of Washoe County, Nevada.

TO HAVE AND TO HOLD all and singular the said premises and all of the said property, real, personal and mixed, rights, privileges and franchises, together with the appurtenances unto the said party of the second part and to its successors and assigns forever, subject, however, to the mortgage encumbrances above set forth.

IN WITNESS WHEREOF the said party of the first part has caused these presents to be executed by its officers thereunto duly authorized, and its corporate seal [60] to be hereto affixed the day and year first hereinabove written.

RENO POWER, LIGHT AND WATER
COMPANY.

By EDWARD T. STEEL,
Vice-President.

(Seal) Attest: WILLIAM T. CRAWFORD,
Assistant Secretary.

Commonwealth of Massachusetts,
County of Suffolk,—ss.

This 30th day of June, A. D. 1922, before me, Ernest I. Doe, a Notary Public in and for said County and Commonwealth, duly commissioned and sworn, personally appeared Edward T. Steel, known to me to be a Vice-President and William T. Crawford, known to me to be an Assistant Secretary of Reno Power, Light and Water Company, the corporation described in and whose name is subscribed to the within and annexed instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand [61] and official seal the day and year in this certificate first above written.

(Seal)

ERNEST I. DOE,

Notary Public in and for the Commonwealth of
Massachusetts, Residing in Waltham.

My commission expires July 5, 1923.

Form approved.

J. C. JEWETT,

JHO.

THE COMMONWEALTH OF MASSACHU-
SETTS.

Office of Secretary.

Boston, June 30, 1922.

I HEREBY CERTIFY, That at the date of the attestation hereto annexed, Ernest I. Doe, whose

name is signed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking the same, a notary public for the said Commonwealth duly commissioned and constituted; that to his acts and attestations, as such, full faith and credit are and ought to be given in and out of court; that as such notary public, he is by law authorized to administer oaths and take acknowledgments of deeds or conveyances of lands, tenements or hereditaments and other instruments throughout the Commonwealth to be recorded according to law; and that I verily believe his signature to the annexed attestation to be genuine.

IN TESTIMONY OF WHICH, I have hereunto affixed the Great Seal of the Commonwealth the date above written.

(Seal)

F. W. COOK,

Secretary of the Commonwealth. [62]

[Endorsed]: No. 25,829. Filed for Record at Request of Geo. A. Campbell, July 7, 1922, at 35 minutes past 3 o'clock P. M. Recorded in Book 61 of Deeds, page 170, Records of Washoe County, Nevada. Delle B. Boyd, County Recorder. By _____, Deputy. Indexed. Verified.

[Endorsed]: No. G.-29. U. S. District Court, Nevada. Sierra Pacific Power Company, Plaintiff, vs. City of Reno et al., Defendant. Plff. Exhibit No. "G." Filed April 24, 1930. E. O. Patterson, Clerk. By O. E. Benham, Deputy Clerk.

(Documentary stamps totaling \$1,707.50, affixed thereto.) [63]

[Title of Cause.]

MINUTES OF COURT—MAY 5, 1930—MEMORANDUM DECISION AND ORDERS DENYING MOTION TO DISMISS COMPLAINT AND GRANTING PRELIMINARY INJUNCTION.

Plaintiff's application for a preliminary injunction and defendants' motion to dismiss the complaint and to dissolve the temporary restraining order heretofore issued, having heretofore been heard, argued and submitted to the Court, on this day the Court handed down and filed the following decision and orders (see memorandum decision and orders denying motion to dismiss complaint and granting preliminary injunction on page 65). [64]

Filed May 5, 1930. E. O. Patterson, Clerk. By _____, Deputy.

[Title of Court and Cause.]

MEMORANDUM DECISION AND ORDERS DENYING MOTION TO DISMISS COMPLAINT AND GRANTING PRELIMINARY INJUNCTION.

Plaintiff's application for a preliminary injunction and defendants' motion to dismiss the complaint and to dissolve the temporary restraining

order heretofore issued, having been submitted to the Court for decision, and it appearing from the allegations in the complaint that the meters installed and in process of installation by plaintiff in or in connection with the water mains or water system of the City of Reno have not been and are not being installed for the purpose of fixing charges against the users and consumers of plaintiff in the City of Reno, but for other purposes, and the Court being [65] fully advised in the premises,—

IT IS ORDERED that defendants' motion to dismiss be, and the same hereby is, denied, and that defendants have twenty days in which to answer.

IT IS FURTHER ORDERED that plaintiff's motion to continue the restraining order heretofore issued as an injunction *pendente lite*, be, and the same hereby is, granted, to the extent only of enjoining defendants until the trial and determination of this cause, or until the further order of this Court, from doing or causing to be done any of the alleged threatened acts mentioned in Paragraph V of plaintiff's complaint. The Court upon notice, and good cause shown, reserves power to modify this order in respect to preliminary injunction in any particular.

Dated this 5th day of May, 1930.

FRANK H. NORCROSS,

District Judge. [66]

Filed May 24, 1930. E. O. Patterson, Clerk. By
O. E. Benham, Deputy.

[Title of Court and Cause.]

ANSWER.

Now come the above-named defendants by Le Roy Pike, as city attorney of defendant, City of Reno, a municipal corporation, their attorney, and by Sardis Summerfield as their solicitor, and answering plaintiff's complaint in the above-entitled action, admit, deny and allege as follows, to wit:

I.

Admit the truth of the allegations contained in Paragraph I of plaintiff's complaint.

II.

Admit the truth of the allegations contained in Paragraph II of plaintiff's complaint. [67]

III.

Deny that plaintiff is now, or that it or its predecessors in interest for many years last past or at any time at all ever have been engaged in selling water to the inhabitants of the cities of Reno and Sparks, or either or any thereof, or to the said cities, or either thereof, and deny that plaintiff now owns, or at any time has ever owned any water. Deny that plaintiff or its predecessors in interest in the conduct of its or their business in serving and distributing water to the cities of Reno and Sparks and to their inhabitants, or to either of any thereof, has or ever have at any time acted under or by virtue of any franchise or franchises. Deny that

plaintiff or its predecessors in interest, or either thereof, have for more than twenty years last past, or for any period of time, or at all, in the operation or maintenance of its, or their, plant or pipe-lines or mains or services, has or have used the streets or alleys of defendant, City of Reno, or has or have installed or maintained under said streets and alleys various, or sundry, or other apparatus or equipment save and except water conveyance pipes.

IV.

Deny that the foundations and water meters which have been installed by plaintiff within the City of Reno have been installed for other purpose or purposes than that of measuring the amount of water passing through its mains or pipes and delivered to individual consumers thereof. Deny upon information and belief that at any time during the summer of 1929 any draught upon plaintiff's reservoirs attained a maximum of fourteen million gallons daily and deny that any such draught during the winter of 1929 and 1930 equaled a minimum of from [68] seven to nine million gallons daily and further particularly deny upon information and belief that at any time during the years of 1929 and 1930 the entire draught of water from the reservoirs of plaintiff was delivered to the cities of Reno and Sparks and to the inhabitants thereof or to all, any or either thereof. Deny that there is a large or unnecessary waste of water within the City of Reno by the users or consumers of water delivered therein by plaintiff. Deny that plaintiff can deter-

mine the waste of water, or the extent thereof, or the person, or the consumers, or the classes of consumers responsible for water wastage only by the installation of meters. Deny that for the purpose of determining the source or cause of any leakage from the mains or services of plaintiff it is necessary to install water quantity measurement meters. Deny that for plaintiff to determine at any time what is or should be a reasonable or normal use of water by consumers within the City of Reno it is necessary to install therein water quantity measurement meters and deny that such meters are necessary to enable plaintiff to detect or identify wasteful water users therein if any there be. Deny that in order for plaintiff to determine whether or not certain or any individual consumers or users of water within the City of Reno are wasteful the installation of water quantity measuring meters is or has been necessary. Deny that to enable plaintiff at any time to classify the water consumers within the City of Reno for the purpose of fixing or determining its service rate charges to its classified water users therein it is or has been necessary to install within said city water quantity measuring meters. Deny that in order to enable plaintiff to ascertain the quantity of water necessary for use in the City of Reno, or to enable [69] it at any time to provide additional water for any increased population in said city it is necessary to install water quantity measuring meters. Deny that any meters heretofore installed by plaintiff or by it intended hereafter to be installed within the City of Reno have

been, or will be, installed for any other purpose than to measure the quantity of water by it delivered to the users thereof within said city and deny that said meters or either thereof will be used, other than incidentally if at all, as check meters or as the sources of informational data. Deny that the meters heretofore installed, or those intended to be installed by plaintiff for the purpose of supplying it with data upon which it will base a schedule of rate service charges against the users of the water by it delivered within the said city. Deny that the foundations for and the meters thereon heretofore installed and hereafter intended to be installed by plaintiff do not or will not constitute obstructions in and upon the streets and alleys of the City of Reno and deny that they will not obstruct or interfere with the use thereof by said city and of its inhabitants and of the public generally.

V.

Admit the truth of the contents of Paragraph V of plaintiff's complaint.

VI.

Deny that defendants, or either thereof, at any time have threatened to, or will, unless restrained therefrom, destroy any meter or meter foundation installed or to be installed by plaintiff in or upon the streets or alleys of the City of Reno and deny that they or either thereof have at any time, or will, unless restrained therefrom, destroy, any appliances or apparatus [70] belonging to plaintiff and deny that they, or either thereof, at any time have threat-

ened to or will, if unrestrained therefrom, obstruct or prevent plaintiff from installing in or upon the streets and alleys of the City of Reno such appliances and apparatus as it may desire other than meters or mechanical devices which will measure the quantity of water which plaintiff will deliver to water users within the City of Reno or which will constitute an obstruction to, or interference with, the lawful use of the said streets and alleys by the City of Reno in the interest and general welfare of the inhabitants of said city and of the general public. Deny that the exercise of the equitable powers of this court, or any other court of equity jurisdiction over the subject matter of this action, is necessary to protect plaintiff from any obstruction to, or interference with, any of its alleged rights as detailed in its complaint or from any threat made or act contemplated by defendants, or either thereof. Deny that any act done or threatened to be done, by defendants, or either thereof, as alleged in plaintiff's complaint, constitute, or would constitute, an irreparable damage or injury to plaintiff. Deny that unless restrained or enjoined therefrom defendants, or either thereof, will unlawfully or without right remove from the streets and alleys of the City of Reno any meter or meter foundation thereon or therein.

VII.

Deny that plaintiff's remedy, if any it has, cannot be had in the ordinary course of law.

VIII.

Wherefore defendants pray that they and each of them be hence dismissed with judgment and decree in their favor and against plaintiff and for all other relief meet and equitable in the premises. [71]

And now again come defendants by Le Roy F. Pike and Sardis Summerfield as their attorney and as their solicitor and for the first counterclaim against plaintiff alleges and shows to the Court as follows, to wit:

1.

Admit the truth of the allegations contained in Paragraph I and II of plaintiff's complaint.

2.

Allege that defendant now is, and for more than ten years last past has been, a city of more than ten thousand population and as such ever since has been, and now is, subject to the provisions and requirements of that certain statute of the State of Nevada entitled "An Act defining public utilities, providing for the regulation thereof creating a public service commission, defining its duties and powers, and other matters relating thereto," approved March 28, 1919, and of all later enacted statutes of the State of Nevada amendatory thereof or supplemental thereto.

3.

That plaintiff has never at any time applied for or obtained the permission or consent of the public

service commission of the State of Nevada, or of the State of Nevada or any political subdivision thereof, or of the City of Reno, to install water meters, or the foundations thereof, for any purpose whatever in or upon the streets or alleys of the City of Reno.

4.

Wherefore defendants pray that they be hence dismissed with judgment and decree in their favor for their costs of suit and for all other relief meet and proper in equity.

And now again come defendants by Le Roy F. Pike and [72] Sardis Summerfield as their attorney and solicitor and for a second counterclaim against plaintiff allege and show to the Court as follows, to wit:

A.

Admit the truth of the allegations contained in Paragraphs I and II of plaintiff's complaint.

B.

Allege that practically all of the streets and alleys in the City of Reno are and have been paved with thick macadam bases, heavy concrete overlying structure, and asphaltum or bitulitic street surface finish at a cost to the said city and of the real estate property owners therein of more than one and one-half million dollars. That the only unpaved portions of said streets are narrow strips between the concrete gutter curbs and the concrete sidewalk on said streets. That said narrow strips are the only practical and feasible portions of said

streets in or upon which water meters and the foundations thereof have been or may be installed and are the only places in which plaintiff intends to install water meters and their foundations and that such meters would if so installed by the escape and leakage therefrom and waters thereby collected undermine and unstabilize the concrete gutters in proximity thereto and progressively of the street pavement immediately adjacent to such meters and foundation. (That they would also operate as a catchment and retainer of stagnant water and that the effluvia arising therefrom would become a menace to the health of the people residing in their vicinity.) That they also would constitute obstacles and interferences with the re-establishment of any grade changes the City of Reno may desire to make in the future.

C.

Wherefore defendants pray that they be hence dismissed [73] with judgment and decree in their favor and against plaintiff for their costs of suit and for all proper equitable relief.

And now again come defendants by Le Roy F. Pike and Sardis Summerfield as their attorney and solicitor and for a third counterclaim against plaintiff allege and show to the Court as follows, to wit:

D.

Admit the truth of the allegations contained in Paragraphs I and II of plaintiff's complaint.

E.

Allege that all wastage of water within the cor-

porate limits of defendant, City of Reno, except negligible amounts thereof occurring at infrequent times and in isolated cases as the result of sporadic individual negligence or forgetfulness, from the time such water enters the pipes of plaintiff until its release therefrom at the place of use is, and heretofore has been, the result of the decrepit, weak, leaky, and imperfectly connected pipe-line system which now is and for several years last past has been used and operated by plaintiff in the City of Reno for the purpose of delivering water to said City of Reno and its inhabitants.

F.

WHEREFORE defendants pray that they be hence dismissed with judgment in their favor and against plaintiff for their costs of such and for all proper equitable relief.

LE ROY F. PIKE,

Attorney for Defendants.

SARDIS SUMMERFIELD,

Solicitor for Defendants. [74]

State of Nevada,
County of Washoe,—ss.

E. E. Roberts, being first duly sworn, deposes and says that he is the E. E. Roberts who is named as one of the defendants in the foregoing entitled action and that he verifies the foregoing answer for and on behalf of all of the defendants in said action.

That he has read the foregoing answer and counterclaims and knows the contents thereof and that the same is true of his own knowledge except

as to the matters therein stated upon information and belief and as to those matters he believes it to be true.

E. E. ROBERTS.

Subscribed and sworn to before me this 23d day of May, 1930.

JOHN S. BELFORD,
Notary Public.

Service by copy of foregoing answer as *of it* admitted this 23 day of May, 1930.

THATCHER & WOODBURN,
Attorneys for Plaintiff. [75]

Filed May 27th, 1930. E. O. Patterson, Clerk.
By _____, Deputy.

[Title of Court and Cause.]

REPLY.

Comes now the plaintiff, and for reply to the first counterclaim of defendants, admits, denies and alleges as follows, to wit:

I.

Replying to Paragraph 2 of said first counterclaim, plaintiff admits that the defendant, City of Reno, is now, and for more than ten years last past has been, a city of more than ten thousand population. Plaintiff denies that it, or the City of Reno, or either of them, is, or ever has been, subject to

the provisions and requirements of the statute of the State of Nevada referred to in said paragraph, or to any other statutes of Nevada amendatory thereof or supplemental thereto. [76]

II.

Replying to Paragraph 3 of said first counterclaim of defendants, plaintiff admits that it has never applied for, or obtained, the permission or consent of the Public Service Commission of the State of Nevada, or the State of Nevada, or any of the political subdivisions thereof, or the City of Reno, to install water meters or foundations thereof, for any purpose whatsoever, in or upon the streets or alleys of the City of Reno.

III.

As a further defense to the matters and things set forth and alleged in said first counterclaim, the plaintiff herein alleges all of the matters and things set forth and contained in Paragraph III and IV of its complaint herein.

WHEREFORE, plaintiff prays that said first counterclaim be dismissed, and that it have judgment in its favor thereof.

For reply to the second counterclaim of defendants, plaintiff admits, denies and alleges as follows, to wit:

I.

Admits that the streets and alleys of the City of Reno, or a greater portion thereof, are paved, as alleged in Paragraph B thereof. Plaintiff denies that said narrow strips referred to therein are the

only practical and feasible portions of said streets in or upon which water-meters and foundations thereof have been or may be installed. Plaintiff denies that said places are the only places in which plaintiff intends to install water-meters and their [77] foundations, and in connection therewith, alleges that it is entirely possible and feasible to install water-meters and foundations inside of the curb line and on the property line of the various users and consumers. Plaintiff denies that such meters otherwise or at all installed, would or will, by escape and leakage therefrom, and/or cause of waters thereby collected, undermine and/or destabilize the concrete gutters in proximity thereto and/or progressively of the street pavements adjacent to such meters or foundations. Plaintiff affirmatively alleges that no damage, undermining or destabilizing of the pavements or concrete gutters, or either or any of them will be done, or in anywise affected by the installation and maintenance of its water-meters and foundations. Plaintiff denies that its said water-meters and foundations, or either or any of them, in anywise operate as a catchment and/or retainer of stagnant or other waters. Denies that any such waters be caught or retained by said water-meters and foundations, or either of them. Denies that any effluvia would arise therefrom, or be or constitute in anywise a menace to the health of people residing in their vicinity, or otherwise or at all. Plaintiff denies that said water-meters, and their foundations, or either of them, would or will in any way constitute any obstacle or inter-

ference with the re-establishment of any grade changes that the City of Reno may make, or desire to make, in the future.

II.

As a further defense to the matters and things set forth and alleged in said first counterclaim, the plaintiff herein alleges all of the matters and things set [78] forth and contained in Paragraphs III and IV of its complaint herein.

WHEREFORE, plaintiff prays that said second counterclaim be dismissed.

For reply to the third counterclaim alleged in the answer of defendants, the plaintiff admits, denies and alleges as follows, to wit:

I.

Replying to Paragraph E thereof, plaintiff denies that all wastage of water within the corporate limits of the City of Reno, except negligible amounts thereof, occurring at infrequent times and in isolated cases, is now, or heretofore has been, a result of decrepit and/or weak and/or leaky and imperfectly connected pipe-line system, operated by the plaintiff. Denies that the pipe-line system, or any part of the system of plaintiff, is now, or for several years last past has been, decrepit, weak, leaky and/or imperfectly connected.

WHEREFORE, plaintiff prays that said third counterclaim be dismissed:

THATCHER & WOODBURN,
GEO. B. THATCHER,
WM. WOODBURN,

Solicitors for Plaintiff. [79]

State of Nevada,
County of Washoe,—ss.

Geo. A. Campbell, being first duly sworn, deposes and says: That he is the president and manager of the plaintiff; that he has read the foregoing reply and knows the contents thereof, and the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

GEO. A. CAMPBELL.

Subscribed and sworn to before me this 26th day of May, 1930.

[Seal]

JOHN DONOVAN,
Notary Public.

Service and receipt of the foregoing reply, and a copy thereof is admitted this 26th day of May, 1930.

LE ROY F. PIKE,
Attorney for Defendants. [80]

Filed May 31st, 1930. E. O. Patterson, Clerk.

[Title of Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL.

The above-named defendant, City of Reno, a municipal corporation, conceiving itself aggrieved by the decision made and orders entered on the 5th day of May, 1930, in the above-entitled cause and

having heretofore filed its notice of appeal from said decision and orders to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in its assignment of errors which has heretofore been filed herein, it prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decision and orders were made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

LE ROY F. PIKE,

City Attorney of the City of Reno for Defendant,
City of Reno.

SARDIS SUMMERFIELD,

Solicitor for Defendant, City of Reno.

The foregoing claim of appeal is hereby allowed.

FRANK H. NORCROSS,

District Judge.

Dated: May 31st, 1930. [801¼]

[Title of Cause.]

MINUTES OF COURT—MAY 31, 1930—ORDER
ALLOWING APPEAL AND FIXING
BOND.

Le Roy F. Pike, Esq., of counsel for defendants herein, having presented notice of appeal and petition for allowance of appeal from an order made and entered May 5th, 1930, in the above-entitled cause, together with assignments of error, the following orders were made and entered, to wit: "OR-

der Allowing Appeal. (Order Allowing Appeal follows.)”

IT IS FURTHER ORDERED that bond, to act as a bond for costs on appeal, be and the same is hereby fixed in the sum of Three Hundred (\$300.00) Dollars, and that citation on appeal issue herein. [80 $\frac{1}{2}$]

Filed May 31, 1930. E. O. Patterson, Clerk. By O. E. Benham, Deputy.

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

A petition for allowance of an appeal from the decision and order of the Court entered on the 5th day of May, 1930, in the above-entitled cause having been filed in this court and good cause appearing therefor,—

NOW, THEREFORE, IT IS HEREBY ORDERED that said appeal be allowed, and that a transcript of the record, proceedings and papers upon which said decision and orders were made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 31st day of May, A. D. 1930.

FRANK H. NORCROSS,
District Judge. [80 $\frac{3}{4}$]

Filed May 24, 1930. E. O. Patterson, Clerk. By
O. E. Benham, Deputy.

[Title of Court and Cause.]

NOTICE OF APPEAL FROM DECISION AND
ORDERS DENYING MOTIONS TO DIS-
MISS COMPLAINT AND TO DISSOLVE
RESTRAINING ORDER, AND FROM OR-
DER GRANTING INJUNCTION PEN-
DENTE LITE.

To Plaintiff, Sierra Pacific Power Company, a Cor-
poration, and to Thatcher and Woodburn as Its
Attorneys of Record:

You and each of you are hereby notified that the
above-named defendant, City of Reno, a municipal
corporation, appeals to the United States Circuit
Court of Appeals for the Ninth Circuit from the
decision and orders of the District Court of the
United States in and for the District of Nevada
made and filed in said District Court in the above-
entitled action on May 5, 1930, denying the motions
of said defendant, City of Reno, to dismiss plain-
tiff's complaint, and to dissolve the temporary re-
straining order theretofore issued without notice,
and from the order of said District Court granting
an injunction *pendente lite*. [81]

LE ROY F. PIKE,

Attorney of Defendant, City of Reno.

SARDIS SUMMERFIELD,

Solicitor for Defendant, City of Reno.

Served by copy of the foregoing notice of appeal is hereby admitted as of after filing this 23d day of May, 1930.

THATCHER & WOODBURN,
Attorneys for Plaintiff. [82]

Filed May 24th, 1930. E. O. Patterson, Clerk.
By O. E. Benham, Deputy.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the above-named defendant, City of Reno, a municipal corporation, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above-entitled cause from the decision and orders made by this Honorable Court on the 5th day of May, 1930.

I.

That the United States District Court for the District of Nevada erred in denying the motion interposed by said defendant, City of Reno, to dismiss plaintiff's complaint, for the following reasons, to wit: [83]

1. That it affirmatively appears from the face of said bill of complaint that plaintiff as a public utility corporation is engaged in the business of serving and distributing water to defendant, City of Reno, a city of more than ten thousand popu-

lation, and to the inhabitants thereof, for domestic and other beneficial purposes and that the relief sought by plaintiff in this action is an injunction prohibiting and preventing defendants from obstructing plaintiff from installing or maintaining water-meters upon or in the streets and alleys of defendant, City of Reno, with which to measure the quantity of water served or delivered to said defendant, City of Reno and to the inhabitants thereof as water users and that said alleged relief if permitted would be in violation of the direct terms of that certain statute of the State of Nevada entitled "An Act defining public utilities, providing for the regulation thereof, creating a public service commission, defining its duties and powers, and other matters relating thereto," approved March 28, 1919, and particularly of the terms of the proviso contained in section 13 of said statute.

2. That said bill of complaint fails to state any facts entitling it to install or to maintain water-meters upon or in the streets and alleys of defendant, City of Reno, with which to measure the quantity of water served or delivered to said City, or to the inhabitants thereof, in that it is not alleged or stated therein that plaintiff has the permission or consent of defendant, City of Reno, or of the State of Nevada, or of the Public Service Commission of the State of Nevada, or of any other authority whatever, to so install or maintain such water-meters in or upon said places. [84]

3. That said bill of complaint fails to allege or state any grant, provision, or term, contained in

any franchise or franchises under which it has been acting in serving and distributing water to defendant, City of Reno, and to the inhabitants thereof, authorizing it to install or to maintain water-meters upon or in the streets or alleys of said defendant for the purpose of measuring the quantity of water served or delivered to said City or to its inhabitants, or for any other purpose whatever, or at all.

4. That it does not appear from plaintiff's bill of complaint that plaintiff's occupancy and use in the past of the streets and alleys of defendant, City of Reno, for the installation and maintenance of its instrumentalities for serving and distributing water was by virtue of any grant, franchise, or authority so to do or was exercised by plaintiff in any other way, or manner than that of a seizer and trespasser.

5. That it does not appear from the facts alleged in plaintiff's bill of complaint that plaintiff now is, or ever has been engaged in the business of selling or furnishing water to defendant, City of Reno, or to the inhabitants thereof, but that upon the contrary it affirmatively appears therefrom that it now is, and at all times mentioned in its bill of complaint has been, no more than the agent of said defendant and its inhabitants for the diversion, transportation, distribution and delivery of such water.

6. That said bill of complaint fails to state facts sufficient to show any necessity whatever for the installation or maintenance of any water-meters

in or upon the streets or alleys of the defendant, City of Reno. [85]

7. That said bill of complaint does not state facts sufficient to show that the installation and maintenance of water-meters upon or in the streets and alleys of defendant, City of Reno, will not constitute an obstruction to the proper and reasonable use thereof by the said defendant and by the general public.

II.

That the United States District Court for the District of Nevada erred in issuing its temporary restraining order without notice to the defendant, City of Reno, for the reason that specific facts clearly showing plaintiff's danger of suffering immediate and irreparable injury, loss, or damage unless said defendant was enjoined without notice, was not shown to the Court by plaintiff's verified complaint or otherwise.

III.

That the United States District Court for the District of Nevada erred in issuing its temporary restraining order without notice to defendant, City of Reno, without therein specifically defining the injury and stating why it is irreparable and why the order was granted without notice.

IV.

The United States District Court for the District of Nevada erred in denying the motion of defendant, City of Reno, to dissolve the temporary restraining order issued without notice for the reason

the same was voidable and ineffectual because of the failure to specifically include therein a definition of the injury and a statement of why it is irreparable and why it was granted without notice. [86]

V.

The United States District Court for the District of Nevada erred in continuing in a modified form as an injunction *pendente lite* the temporary restraining order issued without notice for the reason that the same was voidable and ineffectual for any purpose and should have been dissolved upon the motion of defendant, City of Reno.

LE ROY F. PIKE,
Attorney for Defendant, City of Reno.
SARDIS SUMMERFIELD,
Solicitor for Defendant, City of Reno.

Service by copy of the foregoing assignment of errors as of after filing is admitted this 23d day of May, 1930.

THATCHER & WOODBURN,
Attorneys for Plaintiff. [87]

Filed June 9, 1930. E. O. Patterson, Clerk. By
O. E. Benham, Deputy.

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS,
that we, the City of Reno, a municipal corporation,

as principal, and National Surety Company, a corporation, as surety, are held and firmly bound unto plaintiff, Sierra Pacific Power Company, a corporation, the above-named plaintiff, in the full and just sum of Three Hundred and No/100 (\$300.00) Dollars to be paid to the said plaintiff, its attorneys, assigns, receivers, or successors in interest, to which payment, well and truly to be made, we bind ourselves and our successors in interest jointly and severally by these presents.

Signed and dated this 4th day of June, 1930.

WHEREAS, at a session of the above-entitled court in a session held on the 5th day of May, 1930, in a suit pending in said court between Sierra Pacific Power Company, a corporation, as plaintiff and the City of Reno, a municipal corporation et als., as defendants, an order of said court was entered against the said defendants refusing to dismiss plaintiff's complaint and refusing to dissolve the temporary restraining order issued without notice in said action and continuing in a modified form said temporary restraining order as an injunction *pendente lite*, and whereas defendant, City of Reno, a municipal corporation, has appealed from the said order of the said District Court to the United States Circuit Court of Appeals for the Ninth Circuit.

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said City of Reno, a municipal corporation, shall prosecute said [88] appeal to effect and answer all damages and costs if it fails to make its said plea good, then the

above obligation to be void, otherwise to remain in full force and virtue.

CITY OF RENO, a Municipal Corporation.

[Seal]

By E. E. ROBERTS,

Mayor.

And by J. B. REESE,

Clerk.

NATIONAL SURETY COMPANY.

[Seal]

By R. W. STEWART,

Attorney-in-fact. (R. W. STEWART.)

The foregoing bond on appeal is hereby approved this 9th day of June, 1930.

FRANK H. NORCROSS,

District Judge.

[Endorsed]: In the District Court of the United States, in and for the District of Nevada. Sierra Pacific Power Company, a Corporation, Plaintiff, v. City of Reno, a Municipal Corporation, E. E. Roberts, Mayor of the City of Reno, James Glynn, City Engineer of the City of Reno, Le Roy F. Pike, City Attorney of the City of Reno, Defendants. Appeal Bond. [89]

Filed May 31, 1930. E. O. Patterson, Clerk.

[Title of Court and Cause.]

PRAECIPE FOR CERTIFICATION OF RECORD ON APPEAL.

To E. O. Patterson as Clerk of the Above-entitled Court:

Please certify and make return on appeal to the United States Circuit Court of Appeals for the Ninth Circuit the record on appeal in the above-entitled action as defined by rule 14 of said Circuit Court of Appeals and to which said rule you are hereby referred for your guidance.

Very respectfully,

LE ROY F. PIKE,

City Attorney and Attorney for Defendant, City of Reno.

SARDIS SUMMERFIELD,

Solicitor for Defendant, City of Reno. [90]

Filed June 16, 1930. E. O. Patterson, Clerk. By O. E. Benham, Deputy.

[Title of Court and Cause.]

PRAECIPE FOR CERTIFICATION OF RECORD ON APPEAL.

To E. O. Patterson as Clerk of the Above-entitled Court:

Please certify and make return on appeal to the

United States Circuit Court of Appeals for the Ninth Circuit the record on appeal in the above-entitled action as defined by rule 14 of said Circuit Court of Appeals and to which said rule you are hereby referred for your guidance.

Very respectfully,

LE ROY F. PIKE.

(Signed) LE ROY F. PIKE,

City Attorney and Attorney for Defendant, City of Reno.

SARDIS SUMMERFIELD.

SARDIS SUMMERFIELD,

Solicitor for Defendant, City of Reno.

Service of the foregoing is hereby acknowledged this 14th day of June, A. D. 1930.

THATCHER & WOODBURN,

Solicitors for Plaintiff. [90 $\frac{1}{2}$]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Nevada,—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of Sierra Pa-

cific Power Company, a Corporation, Plaintiff, vs. City of Reno, a Municipal Corporation et als., Defendants, said case being No. G.-29 on the docket of said court.

I further certify that the attached transcript, consisting of 93 typewritten pages numbered from 1 to 93, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as [91] the same appears from the originals of record and on file in my office as such Clerk in the City of Carson City, state and district aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to \$37.25, has been paid to me by LeRoy F. Pike, Esq., one of the attorneys for the defendants in the above-entitled cause.

And I further certify that the original citation, issued in this cause, is hereto attached.

WITNESS my hand and the seal of said United States District Court this 28th day of June, A. D. 1930.

[Seal] E. O. PATTERSON,
Clerk, U. S. District Court, District of Nevada.

[92]

Filed June 9, 1930. E. O. Patterson, Clerk. By
O. E. Benham, Deputy.

[Title of Court and Cause.]

CITATION ON APPEAL.

To Sierra Pacific Power Company, a Corporation,
GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, California, on the 1st day of July, 1930, pursuant to a notice of appeal filed in the Clerk's office of the District Court of the United States in and for the District of Nevada, wherein the City of Reno, a municipal corporation, is appellant and you are appellee, to show cause, if any there be, why the decision and orders rendered against appellant as in said notice of appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable FRANK H. NORCROSS, as Judge of the District Court of Nevada, this 31st day of May, 1930.

FRANK H. NORCROSS,
U. S. District Judge.

[Seal] Attest: E. O. PATTERSON,
Clerk.

June —, 1930.

Service by copy of the foregoing citation on appeal is admitted this 7th day of June, 1930.

THATCHER & WOODBURN,
Solicitors for Appellee. [93]

[Endorsed]: No. 6178. United States Circuit Court of Appeals for the Ninth Circuit. City of Reno, a Municipal Corporation, Appellant, vs. Sierra Pacific Power Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Nevada.

Filed July 1, 1930.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

